



## Risk Management and Patient Safety News



### Responding to Negative Online Comments

by Melvin Barnes, MPA, CPHRM

Patients are increasingly seeking information about physicians online. Nearly 60 percent report that online reviews are important when choosing a physician. Physicians are experiencing the not-so-new phenomenon of negative publicity, but it is happening with more immediacy and reach through social media and other marketing outlets.

The ability to remain anonymous on these platforms can embolden people to post a negative review. These negative reviews can come from angry patients, disgruntled employees, and sometimes even random members of the public. There are many online sites that allow patients to rate their physicians and leave narratives about their experiences. These reviews can play a significant role in a potential patient's choice of healthcare providers.<sup>1</sup>

Because negative reviews can affect any physician and his or her practice, the issue certainly warrants devising a plan of action. Whether a physician is part of a large group or in solo practice, being prepared with a stepwise plan to address negative reviews helps support a consistently applied and, perhaps, a less emotionally charged or impulsive response.<sup>2</sup>

#### Recommended Risk Management Mitigation Strategies

- Don't panic. Stay calm and understand that it is not possible to please every patient.
- Maintain professionalism and put the patient's needs first.
- Ask patients to go online and rate your services. Positive ratings will help to counterbalance negative comments.<sup>3</sup>
- Do not respond immediately or impulsively. Take time to consider the comment, reflect on why the individual felt compelled to post, and decide if it is even worthy of response. Not all negative comments are worthy of your time to respond. Engaging someone may start a chain reaction of negative slurs and comments and may potentially lead to litigation.
- If responding with a post, consider using canned non-patient- or situation-specific responses. For example, "Our practice always strives for a positive patient experience, and we are sorry you were not satisfied. If you are a patient in our practice, please contact our office directly to allow us to respond to

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and rectify any problem you may have had.” Never include any protected health information (PHI) or argue a point in any response.

- If you feel the information is untrue, inappropriate, or simply meant to be provocative, try contacting the website administrator. Since rating sites have content guidelines, the administrator may remove information that violates the site’s terms. For example, Yelp will remove posts for various reasons, but they “don’t typically take sides in factual disputes and generally allow Yelpers to stand behind their reviews.”<sup>4</sup>
- Limit the response to general information or updates about how specific issues are addressed.<sup>5</sup>
- Attempt to move the discussion to a private forum. Again, consider the following response: “I’m sorry

you had a negative experience. Please contact our office directly so that we may address your concerns.”<sup>5</sup>

- Never use patient identifiers, reveal any PHI, or confirm that the person posting is a patient of yours.
- Do not directly or personally attack the individual posting the comment.

Please call the CAP Hotline at 800-252-0555 for expert guidance from an experienced Senior Risk Management and Patient Safety Specialist. ✈

*Melvin Barnes is a Senior Risk Management and Patient Safety Specialist for CAP. Questions or comments related to this article should be directed to [MBarnes@CAPphysicians.com](mailto:MBarnes@CAPphysicians.com)*

#### References

<sup>1</sup>Bendix J. Physician reviews: Patients increasingly consult online ratings when choosing a doctor. Medical Economics. May 8, 2019. Available at: <https://www.medicaleconomics.com/news/physician-reviews-patients-increasingly-consult-online-ratings-when-choosing-doctor>

<sup>2</sup>Lagu T, Metayer K, Moran M, Ortiz L, Priya A, Goff SL, Lindenauer PK. Website characteristics and physician reviews on commercial physician-rating websites. JAMA. 2017;317(7):766-768. Available at: [jamanetwork.com/journals/jama/article-abstract/2603919?apld=scweb](http://jamanetwork.com/journals/jama/article-abstract/2603919?apld=scweb)

<sup>3</sup>Murphy GP, Radadia KD, Breyer BN. Online physician reviews: is there a place for them?. Risk Manag Healthc Policy. 2019;12:85-89. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6526774/>

<sup>4</sup>Yelp Support Center. Will Yelp remove a false or defamatory review? 2017. Yelp website. Available at: [www.yelp-support.com/article/Will-Yelp-remove-a-false-or-defamatory-review?l=en\\_US](http://www.yelp-support.com/article/Will-Yelp-remove-a-false-or-defamatory-review?l=en_US)

<sup>5</sup>Henry TA. How to respond to bad online reviews. American Medical Association (AMA). Patient Support and Advocacy. Sept. 2, 2016. Available at: <https://www.ama-assn.org/delivering-care/patient-support-advocacy/how-respond-bad-online-reviews>



# Nurse Practitioners' Path to Independence

by Gabriela Villanueva



With its passage in 2020, AB 890 created a pathway to greater independence for nurse practitioners (NPs).

Traditionally, the Nursing Practice Act regulated the scope of practice of nurse practitioners by the Board of Registered Nursing (BRN).

AB 890 also establishes a Nurse Practitioner Advisory Committee tasked with providing the BRN with recommendations on nursing education requirements, standard of care, and discipline. The Committee is currently focused on defining minimum standards for NPs looking to transition to independent practice and expand their scope of care.

Starting January 1, 2023, certified NPs who meet additional training requirements may practice independently without standardized procedures. At this time, the Department of Consumer Affairs is conducting physician surveys to assess what additional requirements may be needed for those NPs who will be practicing independently. Physicians are a crucial part of this process to establish a new category of independent NPs who can practice without standardized procedures. These independent NPs will have the ability to provide services traditionally performed by physicians — ordering and performing

diagnostic procedures, certifying disability status and prescribing, administering and dispensing controlled substances.

AB 890 created two different categories of NPs, defined by the settings in which they practice. Each category has different requirements the NP must complete before being allowed to practice without physician supervision.

## Category 103 NPs – Work in a Collaborative Setting

Practice Setting-103 NPs work in practice settings in which there is a collaborative medical team, such as clinics, medical group practices, home health agencies, and hospice facilities. Correctional treatment centers and state hospitals are exempt from this law and NPs at those facilities will continue to practice under standardized procedures.

## Category 104 NPs – NPs in Their Own Practice

Practice Setting-104 NPs work in practice settings outside of those defined in Section 103, which means that an NP can open an independent practice.

The current regulatory process must address and establish the standards and requirements for NPs to practice independently.

In the current legislative cycle, AB 852 has been introduced to provide clarification and technical changes to the new category of independent NPs. It also adds the new independent NPs to pharmacy definitions for prescribers.

AB 852 includes not only “technical and clarifying changes,” but also major provisions:

- Authorizing independent NPs to perform provider-performed microscopy procedures.
- Authorizing independent NPs for the use of a self-screening tool that will identify patient risk factors for the use of self-administered

hormonal contraceptives by a patient, and, after an appropriate prior examination, the ability to prescribe, furnish, or dispense, self-administered hormonal contraceptives to the patient.

- Adding independent NPs to the list of existing providers that may prescribe topical medications for occupational therapy.
- Clarifying that NPs are not authorized to independently administer, monitor, or order the administration of general or deep sedation.
- Making the following changes to the independent NP physician consultation requirements:
  - a) Consultation must be obtained as specified in the "practice protocols" rather than the "individual protocols."
  - b) Defines "practice protocols" as a written document that includes, but is not limited to, a description of the manner of communication with and availability of the consulting physician or physicians and any specialized circumstances under which the nurse practitioner is to communicate in a timely manner with a consulting physician concerning the patient's condition.
  - c) Clarifies that NP consultation with a physician and surgeon alone does not create a physician-patient relationship and that the NP is solely responsible for the services they provide.

d) Requires consultation if a problem is not resolving as anticipated after ongoing evaluation and management of the situation, rather than immediately.

- Clarifying that an NP must refer a patient experiencing acute decompensation if not consistent with the progression of the disease and corresponding treatment plan and corrects a drafting error.
- Adding independent NP offices as a place respiratory care may be practiced.
- Adding independent NPs to various dispensing and prescription definitions in pharmacy law.
- Adding independent NP staff committees, peer review bodies, and societies to the exclusion for legal discovery in the Evidence Code.

AB 852 has passed out the Assembly and is awaiting policy committee hearing in the Senate.

The regulatory process to determine additional training and certification requirements is now currently taking place. These meetings are open and public comment via telephone is encouraged. If you are interested, you can find the NPAC meeting schedule here:

<https://www.rn.ca.gov/consumers/meetings.shtml> ↩

*Gabriela Villanueva is CAP's Government and External Affairs Analyst. Questions or comments related to this article should be directed to [GVillanueva@CAPphysicians.com](mailto:GVillanueva@CAPphysicians.com).*



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# No Surprises Billing Act: Updates and Overview

The No Surprises Billing Act went into effect on January 1, 2022. A major provision of the bill is the Good Faith Estimate (GFE), designed to protect uninsured or self-pay patients from unexpected, costly medical bills. If the individual does not have health insurance or plans not to use insurance, the individual is eligible to receive a GFE of what they may expect to be charged for the visit or procedure prior to receiving the service. The provision allows for a patient to also request a good faith estimate at any time.

The Centers for Medicare and Medicaid Services (CMS) released its final rule that includes timelines for when the patient is entitled to receive a GFE. It can depend greatly upon the patient's insurance status, the provider's insurance network status, and the type of care and location of the service.

The provider or facility must determine if the patient is eligible for a GFE by asking the individual if they are part of the following:

- A group health plan
- Group or individual health insurance coverage offered by a health insurance issuer
- A federal healthcare program
- A health benefits plan under a Federal Employees Health Benefits (FEHB) Program

If the individual is not enrolled in any of the above mentioned, then they are considered self-pay and are entitled to a GFE. As part of the rules on GFE, a new Patient-Provider Dispute Process (PPDR) has also been put in place that is available to uninsured or self-pay individuals who receive a bill that is substantially more than the expected charges provided in the Good Faith Estimate.

- The No Surprises Act applies to most plan types
- Balance billing may be prohibited based on plan type
- A Good Faith Estimate must be provided to uninsured or self-pay patients prior to office visit timing based on when appointment is made)
- Notice and consent can be signed by patient to waive protections for balance billing in exchange for provision of services (time guidelines applicable)

For more information on the No Surprises Act, visit:


<https://www.cms.gov/nosurprises>

A sample Good Faith Estimate template may be found at:

<https://www.cms.gov/files/document/good-faith-estimate-example.pdf>

Good Faith Estimate FAQs:

<https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Guidance-Good-Faith-Estimates-FAQ.pdf>

For inquiries relating to the No Surprises Act, members may contact Andie Tena, CAP's Director of Practice Management Services, [ATena@CAPphysicians.com](mailto:ATena@CAPphysicians.com) or at 213-473-8630. 

*Andie Tena is CAP's Director of Practice Management Services. Questions or comments related to this column should be directed to [ATena@CAPphysicians.com](mailto:ATena@CAPphysicians.com).*



# No-Cost Assistance Program for CAP Members: Professional Support and Guidance for Everyday Life

CAP remains committed to identifying tools and resources to help ensure your well-being. As a benefit of your CAP membership, you can now access MetLife's Employee Assistance Program at no cost.

CAP Physicians Insurance Agency, Inc. (CAP Agency) is pleased to partner with MetLife to provide CAP members and their families with this important benefit. The program's experienced counselors offered through LifeWorks — one of the nation's premier providers of Employee Assistance Program services — can address a wide variety of personal and professional issues and talk to you about anything going on in your life including:

- **Family:** Going through a divorce, caring for an elderly family member, returning to work after having a baby
- **Work:** Job relocation, building relationships with coworkers and managers, navigating through reorganization
- **Money:** Budgeting, financial guidance, retirement planning, buying, or selling a home, tax issues
- **Legal Services:** Issues relating to civil, personal, and family law, financial matters, real estate, and estate planning
- **Identity Theft Recovery:** ID theft prevention tips and help from a financial counselor if you are victimized
- **Health:** Coping with anxiety or depression, getting the proper amount of sleep, or kicking a bad habit like smoking
- **Everyday Life:** Moving and adjusting to a new community, grieving over the loss of a loved one, military family matters, training a new pet

## Convenient and confidential help when you want it, how you want it.

Simply call 1-888-319-7819 to speak with a counselor or to schedule a phone or video conference appointment. These services are available 24 hours a day, 7 days a week. Any personal information provided to LifeWorks is completely confidential.\*

Your benefit includes up to five phone or video consultations with licensed counselors for you and your eligible household members, per issue, per calendar year.

When you call, just select "Employee Assistance Program" when prompted. You'll immediately be connected to a counselor and will need to provide your name and identify yourself as a member of the Cooperative of American Physicians. Family members will need to identify themselves as a dependent of a member of the Cooperative of American Physicians.

If you're simply looking for information, the program offers easy-to-use educational tools and resources, online and/or through a mobile app. There is a chat feature so you can talk with a consultant to guide you to the information you are looking for or help you schedule an appointment with a counselor.

Log on to [metlifeeap.lifeworks.com](https://metlifeeap.lifeworks.com), username: metlifeeap and password: **eap**

While the program offers a broad range of services, all the services you may need may not be covered. \*\*

## The Employee Assistance Program does not provide:

- Inpatient or outpatient treatment for any medically treated illness
- Prescription drugs
- Treatment or services for intellectual disability or autism

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- Counseling services beyond the number of sessions covered or requiring longer term intervention
- Services by counselors who are not LifeWorks providers
- Counseling required by law or a court, or paid for by workers' compensation

\* MetLife and LifeWorks abide by federal and state regulations regarding duty to warn of harm to self or others. In these instances, the consultant may have a duty to intervene and report a situation to the appropriate authority.

\*\* This service is provided by MetLife and LifeWorks and other limitations may apply.

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CAP Agency partners with MetLife to provide CAP members and their families with some of the value-added insurance benefits automatically received upon joining CAP as well as the personal insurance products available for purchase at competitive large group rates. As a full-service insurance agency, CAP Agency is here to help you understand these value-added benefits, provide information and quotes on additional coverage, and review your current insurance programs to make sure you are adequately protected. Call us today at 800-819-0061 or email [CAPAgency@CAPphysicians.com](mailto:CAPAgency@CAPphysicians.com) to learn more. 



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# Save the Date

**Saturday, April 30, 2022**

**9:00 a.m. to Noon**

## LITIGATION EDUCATION RETREAT

### Supporting CAP Members During a Medical Professional Liability Lawsuit

Whether you are in the process of a medical professional liability lawsuit, or simply interested in learning more about the litigation process, the Cooperative of American Physicians' Litigation Education Retreat can provide valuable support and guidance.

During this virtual, interactive event, you will learn techniques to help you secure the most favorable litigation result and alleviate the anxiety that most physicians experience during this exceptionally stressful time.

If you are interested in reserving a spot, please email [LERinfo@CAPphysicians.com](mailto:LERinfo@CAPphysicians.com).



# Case of the Month

This month, we feature an article from the archives written by CAP's former General Counsel Gordon Ownby



## When the Patient Seeks a 'Favor'

Asking one's physician for a "favor" generally means asking for something outside of what the physician would normally and customarily do. When that favor also involves asking the physician to step outside his or her specialty, the warning bells should start ringing. Peeling, actually.

A 34-year-old construction manager with a history of Klippel-Feil syndrome and scoliosis visited Dr. NS, a neurosurgeon, for a checkup on his original diagnosis and to check on a lump on his lower back. Upon examination and an MRI, Dr. NS noted a congenital fusion of C2, C3, and C4 and a small hemangioma.

During the initial visit, however, the gentleman told Dr. NS that he and his wife, a nurse at the hospital where Dr. NS was on staff, wanted to have a child and, because his wife was cystic fibrosis positive, he wanted to be screened himself. After that discussion, blood was drawn for a "CFTR Intron Poly T" analysis. The results of that test stated: "DNA testing indicates that this individual is negative for the 5T allele in the cystic fibrosis (CF) gene. This assay analyzes only the poly T tract of the CF gene. It does not analyze any mutations commonly associated with a clinical diagnosis of CF."

When the patient returned to Dr. NS five weeks later, Dr. NS advised him of the MRI findings, discussed some increased risk of adjacent level disease at C5-C6, and recommended that he follow up as needed. Though Dr. NS recalls telling the gentleman of the negative cystic fibrosis test result and advising him to follow up with his primary care physician and his wife's OB/Gyn, Dr. NS's records contain no reference to that discussion.

The next year, the patient's wife suffered a miscarriage.

Her medical records with her OB/Gyn showed no discussion of cystic fibrosis. When the wife, age 35, was seen for another pregnancy five months later, she indicated on her obstetric questionnaire that she was a cystic fibrosis carrier. An "OB intake" note created two weeks later states the wife was a cystic fibrosis carrier and that her husband's CF screening was negative. Prenatal chromosome screening was requested, but not screening for cystic fibrosis. The family history for genetic conditions on the order form was marked "no" and no referral to a genetic counselor was noted.

A note at 19 weeks by the wife's perinatologist describes the patient as a cystic fibrosis carrier while the husband was not. When an ultrasound revealed an echogenic bowel, the perinatologist recommended amniocentesis, which the wife declined. The perinatologist documented that his patient "may consider genetic counseling and fetal testing." That same day, the genetics center documented the declined amniocentesis and also the offer and declination of cystic fibrosis DNA testing for the husband. Nevertheless, subsequent medical records indicate both parents learned at about this time that they were both carriers for cystic fibrosis. The parents nevertheless did not undertake in utero testing.

Three weeks prior to delivery, an ultrasound revealed an echogenic bowel fetal abnormality, excessive fetal growth, and fetal myocardial hypertrophy. The newborn's diagnosis of cystic fibrosis was made through the newborn screening health program.

In a lawsuit for wrongful life and negligent infliction of emotional distress, the family sued Dr. NS, claiming that he was negligent in performing prenatal genetic

testing on the husband, resulting in being erroneously told that he was not a cystic fibrosis carrier and leading to the baby's ultimate condition. The plaintiffs claimed that Dr. NS ordered the wrong test and that the husband did not receive a copy of that initial report. Further, the parents denied that Dr. NS made any referral and claimed that his report to the husband on the negative test was stated definitively.

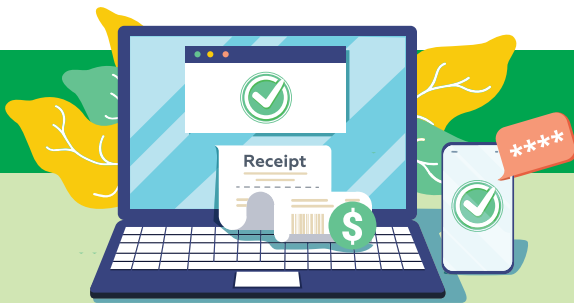
At his deposition, Dr. NS testified that he agreed to the add-on testing for his patient out of professional courtesy to a hospital colleague, even though he did not recall actually knowing his patient's wife. Dr. NS testified that he did not know how "CFTR" appeared on his prescription order, as he said he left the specific test

to be performed up to the lab. Also at his deposition, Dr. NS said he did not recall reading the narrative on the report stating the test results' qualifications.

The family and Dr. NS resolved the litigation informally.

While Dr. NS ordering a cystic fibrosis test in such circumstances could itself be defensible, the absence of any documented referral or even a discussion on the stated limitations of that test created a significant burden for the neurosurgeon.

Physicians put in similar situations should think hard about whether the best "favor" they can give their patients is to tell them they need to see a different treater. ↩



## Sign Up to Enjoy the Benefits of Paperless Billing

CAP understands that saving time is more critical now than ever. That is why you shouldn't wait any longer to sign up for paperless billing and enjoy the ease and convenience of managing your CAP account online.

Enrolling in paperless billing lets you receive your CAP statement via email, pay your bill online, and manage your account easily through a secure portal.

### Here's Why You Should Enroll Today:

- **It's easy and convenient:** You can view your bill anytime on any device, and easily make payments.
- **No more paper:** Your bill will be emailed to you so you can reduce clutter and save on postage.
- **It's secure:** You can access your account 24/7 online at [www.CAPphysicians.com](http://www.CAPphysicians.com).

### Enroll in paperless billing today with the click of a button. Here's how:

1. Visit <https://member.CAPphysicians.com> to log into your CAP account. If you do not have an account, you will need to visit <https://member.CAPphysicians.com/register> to create one.
2. Once logged in, select the green "Set Up Paperless Billing" button to the left of the screen.
3. Select the "Via Email Only" button.
4. Verify your email address and click the "Save Changes" button.

### It is that easy! Enroll Today!

For assistance with your account or if you have questions about your membership, please call **800-610-6642** or email [MS@CAPphysicians.com](mailto:MS@CAPphysicians.com).

# Should I Stay or Should I Go?

## Current Real Estate Conditions May Offer New Options for Medical Spaces



The real estate office marketplace has been hit hard by COVID-19. There are a lot of vacancies in all classes of buildings. Some landlords have decided to take their vacancies and spec build them out, increase rent, and wait out the COVID-19 storm. Other landlords have reduced their asking rents (through negotiations) while not giving much else by way of concessions and by favoring a two- to three-year lease. These landlords plan to increase, possibly double, the rents after the two-to-three-year leases expire. Tenant improvements are expensive, so landlords are not offering them in shorter term leases.

Because of the current lower rates, CAP members who have a lease expiring within the next 18 months should consider renegotiating their existing lease to

obtain a better rate, more concessions, and a longer term. This also applies to physicians who want to expand or decrease their existing space, relocate to a new location, open a second location, or purchase a building.

CAP has had a long-standing relationship with Bailes and Associates, a commercial real estate services and advisory firm specializing in tenant representation offering members no-cost commercial real estate support when securing new or additional office space or effectively negotiating lease renewals.

Here are two recent case studies of physicians who were able to lower their rent as they considered the future of their practices.

### **Wallace Medical Group, Inc.**

A 25-year-old Beverly Hills practice that had no possibility of expansion and hardly any parking and was paying approximately \$5.25 sf plus common area maintenance (CAMS) on a 2,600 sf space. They had approximately 13 months remaining on the lease when Bailes found them a ground floor space that had been vacated by a nationally known medical group and which consisted of 5,440 sf. Dr. Wallace had plans to expand his medical group but was concerned with the pandemic and the political climate. Bailes worked with the landlord and presented the Wallace Medical Group, Inc. in September 2020 with a proposal of accepting the new medical space as-is if the landlord painted the entire suite and replaced the flooring. The negotiated terms included a rental rate of \$3.25 sf with a 2021 base year for expenses, an 11-year lease with the first 12 months of lease's rent being abated (a savings of \$212,160), an option to expand his practice, and other tenant concessions.

### Dr. Leilani Sharpe, Psychiatrist

Dr. Sharpe asked Bailes to find her a space she could timeshare to allow her to comfortably see both pediatric and adult outpatients. She also wanted to be within walking distance to other practice locations in the Santa Monica area. The standard rents range in this area are between \$4.25 and \$5.25 sf. In August 2021, Dr. Sharpe accepted a five-year lease on the prestigious Ocean Park Blvd in Santa Monica with her rent starting at \$3 mg (in this arrangement, she pays her own electrical and janitorial, estimated at \$0.30 sf). The landlord agreed to pay for the tenant improvements and agreed to terms that included an early termination option that *either* party could initiate in year four or five with one year of prior written notification. Dr. Sharpe also received the right to “timeshare” her space with her peers without landlord approval, plus she received one month of rent abatement with an option for an early termination due to death or disability.

Now may be a good time to consider your own lease or medical space arrangement. Here are some top reasons to choose Bailes & Associates, Inc.

1. You'll work closely with a dedicated broker who specializes in medical office real estate and understands its nuances and complexities.
2. Bailes & Associates represents tenants only so there is no conflict of interest with landlords.
3. Bailes & Associates is adept at scrutinizing the fine print to negotiate the optimal deal.
4. You will be paid 10 percent of Bailes' commission from the landlord at close of contract.

As a participant in the CAPAdvantage program, Bailes & Associates looks forward to representing CAP physician

members throughout California. CAPAdvantage is CAP's suite of no-cost or competitively priced practice management benefits to help save members time and money.

Again, if you have a lease that is up for renewal within the next 18 months, you want to take advantage of today's marketplace. To get started and for more information, contact **Gary Pepp** at **562-743-1695** or [gpepp@bailesre.com](mailto:gpepp@bailesre.com). Southern California members may call **310-445-4317**, and Northern California members may call **530-419-9446**. ↗

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