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Final Order No. DOH-08-2124-S -MOA
FILED DATE - 9-24-08
Department of Health
By: Rachael Bell
Deputy Agency Clerk

**STATE OF FLORIDA
BOARD OF CHIROPRACTIC MEDICINE**

DEPARTMENT OF HEALTH,

Petitioner,

vs.

**Case No.: 2008-01474
License No.: CH 2686**

FRED C. BLUMENFELD, D.C.,

Respondent.

_____ /

FINAL ORDER

THIS MATTER came before the Board of Chiropractic Medicine (hereinafter "Board") at a duly-noticed public meeting on August 22, 2008, in Kissimmee, Florida. Petitioner filed an Administrative Complaint seeking disciplinary action against Respondent's license to practice as a chiropractic physician. A copy of the Administrative Complaint is attached to and incorporated as part of this Final Order. Petitioner was represented by Joanna Daniels, Assistant General Counsel. Respondent was present but not represented by counsel.

Petitioner and Respondent have stipulated to a disposition of this case. After considering the presentation of the parties and reviewing the record of the case, the Board voted to adopt the Settlement Agreement as an appropriate settlement of the case. A copy of the Settlement Agreement is attached to and made a part of this Final Order.

The parties shall be governed accordingly.

Pursuant to Section 456.072(4), Florida Statutes, the Department is


authorized to collect costs for investigation and prosecution. The evidence presented to the Board was that the costs associated with this matter are **one thousand three hundred ninety-nine dollars and forty-nine cents (\$1,399.49)**. Payment shall be made to the Department of Health, Compliance Management Unit, Board of Chiropractic Medicine Compliance Officer, P.O. Box 6320, Tallahassee, FL 32324-6320, within **twelve (12) months** of the filing date of this Final Order.

IT IS THEREFORE ORDERED that the Settlement Agreement is adopted and Respondent is hereby ordered to reimburse the Department costs in the amount of **\$1,399.49**.

This Final Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 26th day of Sept, 2008.

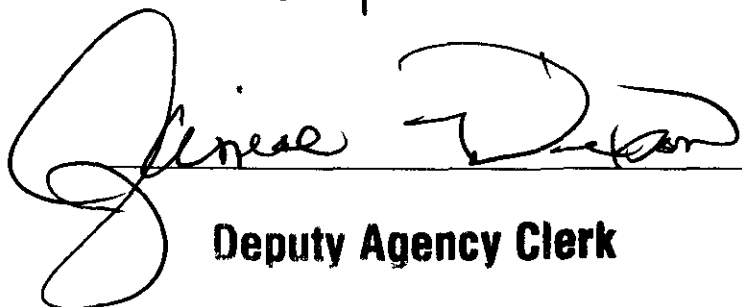
BOARD OF CHIROPRACTIC MEDICINE



Joe Baker, Jr., Executive Director
on behalf of Kenneth Dougherty, D.C., CHAIR

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: **Fred Blumenfeld, D.C.**, 4676 Okeechobee Boulevard, West Palm Beach, Florida 33417-4624; and by interoffice mail to **Deborah B. Loucks**, Assistant Attorney General, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; **Joanna Daniels**, Assistant General Counsel, Department of Health, 4052 Bald Cypress Way, Bin # C-65, Tallahassee, Florida 32399-3265, on September 29, 2008.


Deputy Agency Clerk

Jun 11 2008 5:19

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STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

PETITIONER,

CASE NO. 2008-01474

FRED C. BLUMENFELD, D.C.

RESPONDENT.

SETTLEMENT AGREEMENT

Pursuant to Section 120.57(4), Florida Statutes, the above named parties hereby offer this Stipulation to the Board of Chiropractic Medicine as disposition of the Administrative Complaint, attached hereto as **Exhibit A**, in lieu of any other administrative proceedings. The terms herein become effective only if and when a Final Order accepting the Settlement Stipulation is issued by the Board and filed. In considering this Stipulation, the Board may review all investigative materials regarding this case. If this Stipulation is rejected, it, and its presentation to the Board, shall not be used against either party.

FRED C. BLUMENFELD, D.C., referred to as the "Respondent," and the Department of Health, referred to as "Department" stipulate and agree to the following Agreement and to the entry of a Final Order of the Board of Chiropractic Medicine, referred to as "Board," incorporating the Stipulated Facts and Stipulated Disposition in this matter.



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Petitioner is a state agency charged with regulating the practice of chiropractic medicine pursuant to Section 20.43, Florida Statutes, and Chapter 456, Florida Statutes, and Chapter 460, Florida Statutes.

STIPULATED FACTS

1. At all times material hereto, Respondent was a chiropractic physician in the State of Florida having been issued license number CH 3028.

2. The Department properly served Respondent with an Administrative Complaint or provided a proposed Administrative Complaint alleging violations of either Chapter 456 or Chapter 460, Florida Statutes or both, and the rules adopted pursuant thereto. A true and correct copy of the Administrative Complaint is attached hereto as **Exhibit A.**

3. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint.

STIPULATED CONCLUSIONS OF LAW

1. Respondent admits that, in his/her capacity as a chiropractic physician, he/she is subject to the provisions of Chapters 456 and 460, Florida Statutes, and the jurisdiction of the Department and the Board.

2. Respondent admits that the facts alleged in the Administrative Complaint, if proven, would constitute violations of Chapter 460, Florida Statutes, as alleged in the Administrative Complaint.

3. Respondent agrees that the Stipulated Disposition in this case is fair, appropriate and acceptable to Respondent.

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STIPULATED DISPOSITION

1. **Letter Of Concern**- Respondent shall receive a letter of concern from the Board of Chiropractic Medicine.
2. **Fine**- The Board of Chiropractic Medicine shall impose an administrative fine in the amount of **two thousand five hundred dollars (\$2500)** against the Respondent, to be paid by Respondent to the Department of Health, Division of MQA/Compliance Mgmt Unit, Post Office Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Chiropractic Medicine Compliance Officer, within one (1) year months of the Final Order accepting this Agreement. All fines shall be paid by check or money order.
3. **Reimbursement of Costs**- The Respondent shall reimburse the Board of Chiropractic Medicine for the **actual cost for the investigation and prosecution** of this case. Respondent will pay costs to the Department of Health, Division of MQA/Compliance Mgmt Unit, Post Office Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Chiropractic Medicine Compliance Officer within twelve (12) months from the entry of the Final Order in this cause.
4. **Continuing Education** - Within one year of the date of the filing of a Final Order in this cause, Respondent shall attend four (4) hours of Continuing Education, two (2) of which must be in laws and rules regulating Chiropractic Medicine administered by either the Florida Chiropractic Association or the Florida Chiropractic Society. Respondent shall submit documentation in the form of certified copies of the receipts, vouchers, certificates, or other papers, such as

recognition awards, documenting completion of this course within one (1) year of the entry of the Final Order in this matter. All such documentation shall be sent to the Board of Chiropractic Medicine, regardless of whether some or any of such documentation was provided previously during the course of any audit or discussion with counsel for the Department. These hours shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board, said continuing education course shall consist of a formal, live lecture format.

5. **Modification of Current Advertisements**- To the extent it is feasible, Respondent shall arrange to have all of his/her current advertisements modified to comply with the Board of Chiropractic Medicine.

STANDARD PROVISIONS

1. **Appearance**: The Respondent shall be present when this Stipulation is presented to the Board, and under oath shall answer questions by the Board concerning this case and the disposition thereof.

2. **No force or effect until final order**. It is expressly understood that this Agreement is subject to the approval of the Board and the Department. In this regard, the foregoing paragraphs (and only the foregoing paragraphs) shall have no force and effect unless the Board enters a Final Order incorporating the terms of this Agreement.

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3. **Addresses.** Respondent must keep current residence and practice addresses on file with the Board. Respondent shall notify the Board within ten (10) days of any changes of said addresses.

4. **Future Conduct.** In the future, Respondent shall not violate Chapter 456 or 460 Florida Statutes, or the rules promulgated pursuant thereto, or any other state or federal law, rule, or regulation relating to the practice or the ability to practice chiropractic medicine. Prior to signing this agreement, the Respondent shall read Chapters 456 or 460 and the Rules of the Board of Chiropractic Medicine, at Chapter 64B2, Florida Administrative Code.

5. **Violation of terms considered.** It is expressly understood that a violation of the terms of this Agreement shall be considered a violation of a Final Order of the Board, for which disciplinary action may be initiated pursuant to Chapters 456 and 460, Florida Statutes.

6. **Purpose of Agreement.** Respondent, for the purpose of avoiding further administrative action with respect to this cause, executes this Agreement. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to or in conjunction with consideration of the Agreement. Respondent agrees to support this Agreement at the time it is presented to the Board and shall offer no evidence, testimony or argument that disputes or contravenes any stipulated fact or conclusion of law. Furthermore, should this Agreement not be accepted by the Board, it is agreed that presentation to and consideration of this Agreement and other documents and

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matters by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings.

7. **No preclusion of additional proceedings.** Respondent and the Department fully understand that this Agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or the Department against Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as **Exhibit A.**

8. **Waiver of attorney's fees and costs.** Respondent waives the right to seek any attorney's fees or costs from the Department and the Board in connection with this matter.

9. **Waiver of further procedural steps.** Upon the Board's adoption of this Agreement, Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to otherwise challenge or

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contest the validity of the Agreement and the Final Order of the Board incorporating said Agreement.

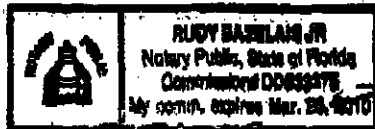
SIGNED this 24 day of June, 2008.

RECEIVED
JUL 28 2008
HMQACB

STATE OF Florida
COUNTY OF Polk

Fred C. Blumenfeld, D.C.
FRED C. BLUMENFELD, D.C.

Before me on this 24 day of June, 2008, personally appeared Fred Blumenfeld, whose identity is known to me by FL Driver License (type of identification) and who, under oath, acknowledges that his/her signature appears above and his/her initials appear in the bottom right-hand corner of each page of this document.



[Signature]
NOTARY PUBLIC

My Commission Expires: 3-28-10

APPROVED this 24 day of June, 2008.

Aria M. Viamonte Ros, M.D., M.P.H.
State Surgeon General

Toly Slop
COUNSEL FOR PETITIONER: for

Joanna Daniels
Assistant General Counsel
(850) 245-4640 ext. 8242

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STATE OF FLORIDA
DEPARTMENT OF HEALTH

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: *Rachelle B*
DATE: 7-10-08

DEPARTMENT OF HEALTH,

PETITIONER,

CASE NO. 2008-01474

FRED C. BLUMENFELD, D.C.

RESPONDENT

**WAIVER OF FINDING OF PROBABLE CAUSE
AND WAIVER OF CONFIDENTIALITY**

1. A confidential Uniform Complaint Form was filed in the referenced case with the Department of Health on January 18, 2008. An Administrative Complaint, which will be filed, along with this waiver, with the office of the agency clerk of the Department of Health, is attached as

Exhibit A.

2. Pursuant to Section 456.073(10), Florida Statutes, I, **FRED C. BLUMENFELD, D.C.**, license number **CH 2686**, have been advised of my right to a finding of probable cause and of the confidentiality provisions of Section 456.073(4) and (10), Florida Statutes. I understand that if I choose not to waive the privilege of confidentiality or the right to a

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determination of probable cause by the Probable Cause Panel or by the Department, the complaint and all information obtained pursuant to the department's investigation would be confidential until 10 days after probable cause has been found to exist by the Probable Cause Panel or by the Department. I also understand that if there is no finding by a Probable Cause Panel or the Department that probable cause exists, then in the absence of my waiver of probable cause and waiver of confidentiality, the complaint and all information obtained pursuant to the investigation would remain confidential.

I, **FRED C. BLUMENFELD, D.C.**, being fully advised of the consequences of so doing, hereby admit probable cause exists for a violation of Sections 460.413(1)(d)(ff), and Section 456.062, Florida Statutes (2007); waive the statutory privilege of confidentiality; and waive the right to a determination of probable cause by the Probable Cause Panel, or the Department when appropriate, regarding the complaint, the investigative report of the Department of Health, and all other information obtained pursuant to the Department's investigation in the above-styled action in order to expedite consideration and resolution of this action by the Florida Board of Chiropractic Medicine in a public meeting.

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By signing this waiver, I, **FRED C. BLUMENFELD, D.C.**, understand that the complaint and all information obtained pursuant to the investigation by the Department, as well as the Administrative Complaint, will immediately become a public record that is immediately accessible to the public; Section 456.073(10) Florida Statutes.

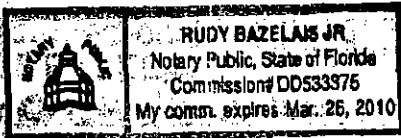
I AFFIRM THAT I HAVE READ AND UNDERSTOOD THE FOREGOING AND CONSENT TO ALL TERMS HEREIN.

Fred C. Blumenfeld

FRED C. BLUMENFELD, D.C.

STATE OF FLORIDA
COUNTY OF Palm Beach

Sworn to or affirmed and subscribed before me this 24 day of June, 2008, by Fred Blumenfeld who is personally known to me or who had produced P. Driver License (type of identification) as identification.



Rudy Bazela's Jr

NOTARY PUBLIC, STATE OF FLORIDA

Rudy Bazela's Jr
(Print, Type of Stamp: Commissioned Name of Notary Public)

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STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2008-01474

FRED C. BLUMENFELD, D.C.

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW, Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Chiropractic Medicine against Respondent, FRED C. BLUMENFELD, D.C., and in support thereof alleges:

1. Petitioner is the state department charged with regulating the practice of chiropractic medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 460, Florida Statutes.
2. At all times material to this order, Respondent was licensed to practice chiropractic medicine in the State of Florida, having been issued license number CH 2686 on or about October 7, 1977.
3. Respondent's address of record is 4676 Okeechobee Boulevard, West Palm Beach, Florida, 33417-4624.

7-18-08



4. Respondent placed a website advertisement, including a posting on LowerBackpainSolutions.com that was visible on or about January 11, 2008, offering a free report about a space age discovery for the treatment of low back pain.

5. The advertisement indicated his office offered treatment utilizing the DRX 9000 system, and offered a free consultation regarding the DRX 9000. The advertisement did not have in capital letters the following statement: "THE PATIENT AND ANY OTHER PERSON RESPONSIBLE FOR PAYMENT HAS A RIGHT TO REFUSE TO PAY, CANCEL PAYMENT, OR BE REIMBURSED FOR PAYMENT FOR ANY OTHER SERVICE, EXAMINATION, OR TREATMENT THAT IS PERFORMED AS A RESULT OF AND WITHIN 72 HOURS OF RESPONDING TO THE ADVERTISEMENT FOR THE FREE, DISCOUNTED FEE, OR REDUCED FEE SERVICE, EXAMINATION, OR TREATMENT." Instead, the disclaimer was not capitalized.

6. The DRX 9000 system provides a program of treatments for relief from pain for those suffering from low back pain. Each treatment consists of a physician prescribed treatment period on the DRX 9000 system and is designed to provide static, intermittent, and cycling distraction forces to relieve pressures on structures that may be causing low back pain.

7. The Respondent's advertisement indicated that the DRX 9000 system was FDA approved.

8. The Food and Drug Administration has "cleared" the DRX 9000 but has not "approved" the DRX 9000.

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9. Respondent advertisement indicated that the DRX 9000 is 86% or 89% effective in reducing or eliminating chronic pain.

10. Respondent's claim that the DRX9000 is 86% or 89% effective is misleading. For instance, Respondent's claim is based on proprietary studies which did not have control groups and which involved the application of multiple treatment modalities to each patient.

11. The Respondent's advertisement includes the following statements:

- a. Thousands of *former* back pain sufferers are calling non-surgical spinal decompression the 'eighth wonder of the world.'" (emphasis in original)
- b. This "new medical breakthrough, *developed by former NASA scientists*" (emphasis in original"
- c. Calls the DRX-9000 new technology
- d. Under the heading of "How Space Travel Cures Back Pain," the advertisement states that astronauts that had a history of back pain would come back and no longer suffer from recurrent episodes, so NASA did what they were good at ... they investigated this new phenomenon.

Count One

12. Petitioner re-alleges and incorporates paragraphs one (1) through four (4) and six (6) through eleven (11) as if set forth fully herein.

13. Section 460.413(1)(d), Florida Statutes (2007), subjects a chiropractic physician to discipline for false, deceptive or misleading advertising.

14. Rule 64B2-15.001(1)(c), Florida Administrative Code (F.A.C.), states that any advertisement shall be deemed by the Board to be false, deceptive or misleading if it creates false, or unjustified expectations of beneficial treatment or successful cures.

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18. Based upon the forgoing, the Respondent has violated Section 460.413(1)(d), Florida Statutes (2007), by disseminating false, deceptive, or misleading advertising.

Count Two

19. Petitioner re-alleges and incorporates paragraphs one (1) through four (4) as if set forth fully herein.

20. Section 460.413(1)(ff), Florida Statutes (2007), provides that violating any provision of Chapter 456 Florida Statutes is grounds for disciplinary action by the Board of Chiropractic Medicine.

21. Section 456.062, Florida Statutes (2007), states in relevant part:

In any advertisement for a free, discounted fee, or reduced fee service, examination, or treatment by a health care practitioner licensed under ... chapter 460 ... or chapter 491, the following statement shall appear **in capital letters** clearly distinguishable from the rest of the text: **THE PATIENT AND ANY OTHER PERSON RESPONSIBLE FOR PAYMENT HAS A RIGHT TO REFUSE TO PAY, CANCEL PAYMENT, OR BE REIMBURSED FOR PAYMENT FOR ANY OTHER SERVICE, EXAMINATION, OR TREATMENT THAT IS PERFORMED AS A RESULT OF AND WITHIN 72 HOURS OF RESPONDING TO THE ADVERTISEMENT FOR THE FREE, DISCOUNTED FEE, OR REDUCED FEE SERVICE, EXAMINATION, OR TREATMENT.** (Emphasis added.)

22. Section 456.062, Florida Statutes (2007), explicitly requires that in any advertisement for a free, discounted fee, or reduced fee service, examination, or treatment by a chiropractic physician, the disclaimer listed in the statute must appear in capital letters.

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15. Respondent's advertisement created false or unjustified expectations of beneficial treatment or successful cures in one or more of the following ways:

- a. When Respondent's advertisement indicated that DRX 9000 system was FDA approved instead of FDA cleared; or
- b. When Respondent's advertisement indicated that the DRX 9000 system was 86% or 89% effective; or
- c. When Respondent's advertisement indicated that DRX-9000 treatment resulted from NASA discoveries when, in fact, NASA discoveries had no relationship with the DRX-9000; or
- d. When the Respondent's advertisement called the DRX-9000 new technology or a new medical breakthrough, when instead it was similar to preexisting devices as evidenced by the FDA clearance.

16. Rule 64B2-15.001(2) (b), F.A.C. (2007) prohibits a chiropractor from disseminating or causing to be disseminated any advertisement or advertising which is in any way fraudulent, false, deceptive, or misleading. Any advertisement or advertising shall be deemed by the Board to be fraudulent, false, deceptive, or misleading when in its content or in the context in which it is presented it makes only partial disclosure of relevant facts.

17. Respondent's advertisement only made a partial disclosure of relevant facts when Respondent acted in one or more of the following ways:

- a. When the Respondent failed to disclose that the alleged 86% or 89% success rate is based on proprietary studies without control groups; or
- b. When the Respondent failed to disclose that there were different modalities used during the course of the studies; or
- c. When the Respondent failed to disclose that the DRX 9000 was not developed by or associated with NASA; or
- d. When the Respondent advertised that the discovery of the treatment was as the result of a medical breakthrough.

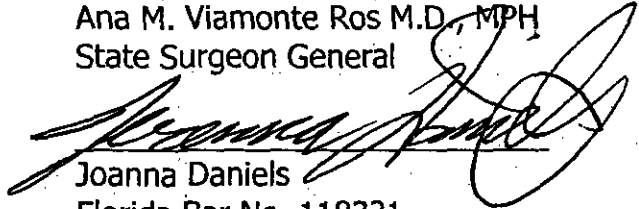
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by failing to include the required capitalized disclaimer language in advertisement for free and discounted services.

WHEREFORE, the Petitioner respectfully requests that the Board of Chiropractic Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 7th day of July, 2008.

Ana M. Viamonte Ros M.D., MPH
State Surgeon General



Joanna Daniels
Florida Bar No. 118321
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
(850) 245-4640 ext 8242
(850) 246-4684 FAX

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: Reginald Cobton
DATE: 7/9/08

PCP:
PCP Members:

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NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.

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