LANQUARISM THEOREM: A VEHICLE TO MEDICAL NEGLIGENCE AND MALPRACTICE IN SUB SAHARAN AFRICA

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Abstract: *Health care delivery has evolved technologically, locally, globally, creating enough peaceful health space, field and atmosphere for competitors to ply their skilled labour and trade. This advancement has improved the old age system of monopoly syndromes on the field where even though if treatment and services of an agency, health centre or organisation is poor, bad, de - humanising. One has no option or choice than to still patronise their service. This lack of will but of no choice often killed the soul, derail the human mind and its adverse effect been felt on the human body. The writers call this the LANQUARISM THEOREM.*

Key Words: *Health industry, technology, advancement, health law, skilled labour, legal instruments, medical negligence, court system, legal precedence, medical jurisprudence, health care providers and practitioners, Patients charter.*

1.0 METHOD:

Sample research where taken from scientific data from other works done and published in peer reviewed journals. They were analysed, criticized constructively, appraised and some which the writers deem fit was taken as a reference on this work. Stratified and probity of empirical data and cross sectional surveys done on the subject matter was also revised by the authors in bringing out the final write up.

2.0 INTRODUCTION:

Many at times developing countries suffer the lack of highly trained health professionals like medical doctors, dentist, biomedical scientist, public health experts, specialized nurses and midwives. With this event, distribution of the few professionals to various parts of their country become a problem as many of these professionals choose to stay in the cities and abandon the smaller towns, villages and deprived areas. Making those at the city, get readily available access to better health care and health education.

It then behooves on the government or ministry in charge of health in that country to persuade some of these professionals to go to deprived areas by rolling out attractive incentive and tax rebate packages which majority still refuses to pay heed to. The few who accept to go to these areas suffer the burden of caring of all the disease burden and surgical treatment of densely populated districts, especially if they are medical doctors/dentist or specialised nurses and midwives.

3.0 DISCUSSION

3.1 Lanquarismtheorem; a situation in Ghana

Ghana has ten (10) regions and the generalpopulation is about 26 million people. Out of the regions four of them have teachings hospitals and regional hospitals. The rest of the hospitals for primary health care usually take place at the district hospitals with mainly just 2 medical doctors in the ones closer to the regional capitals while the district that are further away enjoys only 1 medical doctor to about 25000 patients (Bekwai municipal, kuntenase district hospital, bosomefreho district hospital, new edubiase district hospital etc) .

All district hospitals are located in the district capitals or municipalities. The medical doctors there are basically general practitioners who mainly treat all cases with emphasis on pediatrics/child health, obstetrics and gynaecology, general surgical cases and internal medicine. They have the mandate to access and refer cases above their knowledge and experience to either the regional or teaching hospitals for specialist care.

The sub districts or health centers go down below the district hospitals to very deprived areas where medical doctors don't go or refuse postings to work there. These places are mined by physician assistants or midwives and sometimes nurses serving a population about 6000 people. Although some physician assistants do work at the district hospitals but under strict supervision of medical doctors, mostly they do the outpatient department while the doctors do the in patients care and surgical treatments and attend to emergencies.

3.2 A Case of no medical doctor at post at the district hospital

This is a big issue and a blow to the patients, their relatives and the hospital as a whole. In case of emergencies like cardiac arrest, heart attacks obstructed labour, eclampsia, pregnancy induced hypertensions, ectopic pregnancies, life threatening abortions, and rupturedappendicesetc. Most patients lose their lives due to the fact that the medical doctor might not be available. Other staffs like physician assistants, nurses, midwives can do their best but there are many laws on their practice preventing them from administering some essential drugs or medications and also are not able to do some lifesaving procedures. These are meant for the medical doctors only so if the doctor is absent then there is a complete disaster be falling the hospital. With this, relatives are left to accept any excuses or failures from the doctor and his health team since their services are essential and there are not enough of search professionals in the whole district.Some health personnel also rely on their essential service to abuse the rights of the patients, refuse to care for patients especially when care is not of good standards and patients start to probe or complain. If the care provided fall short of the standard practice, these professionals still see themselves as semi – angels and do what they think is right since there are not too much equal headed people in their field of practice in the districts to challenge their opinions.
Patients then have no other choice but to still plead with them to deliver those services, it becomes a burden on them, they start thinking, and emotional traumas set in with depressions and anxieties. If they had a better option to health care they would have abandoned that district or government hospital and seek remedies elsewhere.

3.3 The Patients Charter

The Patient's Charter was a United Kingdom government document, which set out a number of rights for National Health Service patients. It was originally introduced in 1991, under the then Conservative government, and was revised in 1995 and 1997. The charter set out rights in service areas including general practice, hospital treatment, and community treatment, ambulance, dental, optical, pharmaceutical and maternity. Various stakeholders have criticised the charter for reasons widely ranging from not offering sufficient support to trans – gender patients to increasing attacks on hospital staff.
The Patient's Charter was supplemented by the NHS Plan 2000 and subsequently replaced by the NHS Constitution for England in 2013.

3.4 The Ghana Version of Patients charter

All accredited health facilities either government or private is mandated to respect the rights and responsibilities of the patient and made it known to them, boldly posted in all health centres and hospitals. These rights and responsibilities shall be exercised by accredited and recognized representatives on behalf of minors and patients who are unable for whatever reasons to make informed decisions by themselves; in all healthcare activities the patient's dignity and interest must be paramount. These set of rights and responsibilities where drawn and implemented by the Ghana health service.

The Ghana Health Service is for all people living in Ghana irrespective of age, sex, ethnic background and religion. The service requires collaboration between health workers, patients/clients and society. Thus the attainment of optimal health care is dependent on Team Work. Health facilities must therefore provide for and respect the rights and responsibilities of patients/clients, families, health workers and other health care providers. They must be sensitive to patient's socio-cultural and religious backgrounds, age, gender and other differences as well as the needs of patients with disabilities. The Ghana Health Service expects health care institutions to adopt the patient's charter to ensure that service personnel as well as patients/clients and their families understand their rights and responsibilities.

This Charter is made to protect the Rights of the patient in the Ghana Health Service.
It addresses:
The Right of the individual to an easily accessible, equitable and comprehensive health care of the highest quality within the resources of the country. Respect for the patient as an individual with a right of choice in the decision of his/her health care plans. The Right to protection from discrimination based on culture, ethnicity, language, religion, gender, age and type of illness or disability. The responsibility of the patient /client for personal and communal health through preventive, promotive, simple and curative strategies.

4.0 ANALYSIS:

More than 81.1 percent Ghanaian patients have never seen or heard of the Patients' Charter, a document adopted by the Ghana Health Service (GHS), a study has showed. The document is to ensure its personnel as well as patients and their families understand their rights and responsibilities of quality healthcare delivery. According to the study, 51.1 percent of them said they knew their rights, a situation described by the study as encouraging since patients' knowledge about their rights to accountability in the health seeking process was paramount. These findings were contained in a report launched in Cape Coast by the Ghana Anti-Corruption Coalition (GACC), in partnership of HAP

Foundation - Ghana and STAR-Ghana, all non-governmental organizations. The PPI, which began in 2012, was one of four project survey components undertaken by GACC and conducted in 40 districts across the country including the Central Region which involved Cape Coast, Saltpond, Apam and AgonaSwedru. The study produced seven indices on patients' perceptions of quality healthcare in selected healthcare centres within the four localities which included the attitude of healthcare providers towards patients; privacy in the interaction with patients by healthcare personnel and quality of pharmacy services for patients.

Others were clean and adequate availability of places of convenience at the health centres, quality of consultancy care by patients; quality of diagnosis and availability of drugs and confidence in prescribed drugs for patients.
With more than half of the respondents, representing 63.2 percent, assessing pharmacists to be polite and respectful. 51.5 percent of respondents also showed that prescriptions were well explained; however 47.3 percent of them complained that waiting time at the pharmacy was unreasonable. The study outlined suggestions which sought to effect significant turnover in healthcare policy implications directed at improving knowledge of the Patients' Charter and also improve quality of care in provider institutions. Among them were the re-launching of the Patients' Charter by the GHS with a concerted approach towards publicizing it to inform patients of both their rights and responsibilities; the institution of a "Patient Day" forum at regional and district levels with the purpose to provide a unique platform for healthcare providers and health sector stakeholders, including NGOs to educate the public about their rights and responsibilities in the healthcare seeking process.

In addition healthcare providers, especially nurses, must be encouraged to be courteous, respectful, responsive and tolerant to patients because they were the key factors that patients looked up to in assessing the quality of care received.

5.0 FINDINGS:

5.1The Patient's rights as enshrined

- The patient has the right to quality basic health care irrespective of his/her geographical location.
- The patient is entitled to full information on his/her condition and management and the possible risks involved except in emergency situations when the patient is unable to make a decision and the need for treatment is urgent.
- The patient is entitled to know of alternative treatment(s) and other health care providers within the Service if these may contribute to improved outcomes.
- The patient has the right to know the identity of all his/her caregivers and other persons who may handle him/her including students, trainees and ancillary workers.
- The patient has the right to consent or decline to participate in a proposed research study involving him or her after a full explanation has been given. The patient may withdraw at any stage of the research project.
- A patient who declines to participate in or withdraws from a research project is entitled to the most effective care available.
- The patient has the right to privacy during consultation, examination and treatment. In cases where it is necessary to use the patient or his/her case notes for teaching and conferences, the consent of the patient must be sought.
- The patient is entitled to confidentiality of information obtained about him or her and such information shall not be disclosed to a third party without his/her consent or the person entitled to act on his/her behalf except where such information is required by law or is in the public interest.
- The patient is entitled to all relevant information regarding policies and regulation of the health facilities that he/she attends.
- Procedures for complaints, disputes and conflict resolution shall be explained to patients or their accredited representatives.
- Hospital charges, mode of payments and all forms of anticipated expenditure shall be explained to the patient prior to treatment.
- Exemption facilities, if any, shall be made known to the patient.
- The patient is entitled to personal safety and reasonable security of property within the confines of the Institution.
- The patient has the right to a second medical opinion if he/she so desires.

5.2 The Patient's responsibilities

- The patient should understand that he/she is responsible for his/her own health and should therefore co-operate fully with healthcare providers. The patient is responsible for:

- Providing full and accurate medical history for his/her diagnosis,treatment, counseling and rehabilitation purposes.
- Requesting additional information and or clarification regarding his/her health or treatment, which may not have been well understood.
- Complying with prescribed treatment, reporting adverse effects and adhering to follow up requests.
- Informing his/her healthcare providers of any anticipated problems in following prescribed treatment or advice.
- Obtaining all necessary information, which have a bearing on his/her management and treatment including all financial implication.
- Acquiring knowledge, on preventive, promotive and simple curative practices and where necessary to seeking early professional help.
- Maintaining safe and hygienic environment in order to promote good health.
- Respecting the rights of other patients/clients and Health Service personnel
- Protecting the property of the health facility.

5.3Code of Ethics for all health workers or Care Providers in Ghana

- Preamble: The Code of Ethics for the Ghana Health Service (GHS) defines the genera; moral principles and rules of behavior for all service personnel in the Ghana Health Service.
- The Service shall be manned by persons of integrity, trained to a high standard to deliver a comprehensive equitable service for the benefit of patients/clients and society as a whole.
- All Service personnel shall be competent, dedicated, honest, client-focused and operate within the law of the land
- All Health Professionals shall be registered and remain registered with their Professional Regulatory Bodies
- All Service personnel shall respect the Rights of patients/clients, colleagues and other persons and shall safeguard patients'/client' confidence.
- All Service personnel shall work together as a team to best serve patients'/clients' interest, recognizing and respecting the contributions of others within the team.
- All Service personnel shall co-operate with the patients/clients and their families at all times.
- No service personnel shall discriminate against patients/clients on the grounds of the nature of illness, political affiliation, occupation, disability, culture, ethnicity, language, race, age, gender religion, etc. in the course of performing their duties.
- All Service personnel shall respect confidential information obtained in the course of their duties. They shall not disclose such information without the consent of the patient/client, or person(s) entitled to act on their behalf except where the disclosure of information is required by law or is necessary in the public interest.
- All Service personnel shall treat official discussions, correspondence or reports obtained during official duties as confidential except where disclosure is required by law.
- All information obtained from patients/clients shall only be used for the prome purpose of their management. Any other use of such information shall only be done with the prior consent of the patient or person(s) entitled to act on his/her behalf.
- All Service personnel shall provide information regarding patient's condition and management to patients or their accredited representatives humanely and in the manner they can understand.
- All Service personnel shall protect the properties of the Service including properties entrusted in their care.
- All Service personnel shall respect the rights and abilities of disabled persons and the aged and work together to serve or safeguard their interest
- All Service personnel shall keep their professional knowledge and skills up to date.
- No Service personnel shall demand unauthorized fees from patients/clients
- No Service personnel shall accept any gift, favour or hospitality from the patient/public which might be interpreted as seeking to exert undue influence to obtain preferential consideration in the course of their duty
- All Service personnel shall refrain from all acts of indiscipline including drunkenness, smoking, immorality, abuse of drugs and pilfering in the course of performing their duties.
- All Service personnel shall avoid the use of their professional qualifications in the promotion of commercial products.
- All Service personnel shall act in collusion with any other person for financial gain.
- Service facilities and resources shall not be used for unauthorized private practice.

5.4Lanquarism Theorem an Adjunct of Medical Negligence

Medical malpractice is professional negligence by act or omission by a health care provider in which the treatment provided falls below the accepted standard of practice in the medical community and causes injury or death to the patient, with most cases involving medical error. Claims of medical malpractice, when pursued in US courts, are usually processed as civil torts, but are sometimes subject to criminal procedures, as in the case of the death of Michael Jackson. Medical professionals may obtain professional liability insurances to offset the costs of lawsuits based on medical malpractice.

Frequency and cost of medical errors

Between 15,000 and 19,000 malpractice suits are brought against doctors each year. For example, the Centers for Disease Control and Prevention currently says that 75,000 patients die annually, in hospitals alone, from infections alone - just one cause of harm in just one kind of care setting. From all causes there have been numerous other studies, including A New, Evidence-based Estimate of Patient Harms Associated with Hospital Care by John T. James, PhD that estimates 400,000 unnecessary deaths annually in hospitals alone. Using these numbers, medical malpractice is the third leading cause of death in the United States, only behind heart disease and cancer. Less than one quarter of care takes place in hospitals. Across all care settings the numbers are higher. Another study notes that about 1.14 million patient-safety incidents occurred among the 37 million hospitalizations in the Medicare population over the years 2000-2002. Hospital costs associated with such medical errors were estimated at $324 million in October 2008 alone.

The medical malpractice claim

The parties

The plaintiff iswas the patient or a legally designated party acting on behalf of the patient, or in the case of a wrongful-death suit – the executor or administrator of a deceased patient's estate.

The defendant is the health care provider. Although a 'health care provider' usually refers to a physician, the term includes any medical care provider, including dentists, nurses, and therapists. As illustrated in Columbia Medical Center of Las Colinas v Bush, 122 S.W. 3d 835 (Tex. 2003), following orders may not protect nurses and other non-physicians from liability when committing negligent acts. Relying on vicarious liability or direct corporate negligence, which was found in the case of DanyDecell, CEO, claims may also be brought against hospitals, clinics, managed care organizations or medical corporations for the mistakes of their employees.

Elements of the case

A plaintiff must establish all five elements of the tort of negligence for a successful medical malpractice claim.

A duty was owed: a legal duty exists whenever a hospital or health care provider undertakes care or treatment of a patient.

A duty was breached: the provider failed to conform to the relevant standard care.

The breach caused an injury: The breach of duty was a direct cause and the proximate cause of the injury.

Deviation from the accepted standard: It must be shown that the practitioner was acting in a manner which was contrary to the generally accepted standard in his/her profession.

Damage: Without damage (losses which may be pecuniary or emotional), there is no basis for a claim, regardless of whether the medical provider was negligent. Likewise, damage can occur without negligence, for example, when someone dies from a fatal disease.

6.0 RESULTS:

6.1 MEDICAL NEGLIGENCE IN GHANA

What constitutes medical negligence?

Negligence is a failure on the part of one person to take reasonable care which causes foreseeable damage to another. In law, not every act of carelessness that cases harm will give rise to a successful claim in negligence. For a patient to establish to a court that a doctor has been negligent in the care provided to him by the doctor, he must establish at least three things. By the same token, to successfully defend himself, the doctor must refute at least one of these three.

Once the patient has successfully established these three things he is entitled by law to monetary compensation which is supposed to place him as far as is possible back to the position that he would have been in if the negligence had not occurred. The courts often rely on medical experts and their reports to guide them in reaching a judgment, as judges are not qualified to make professional judgments about the practices of other learned professions.

The three things that the patient needs to establish are:

1. That the doctor owed him a duty of care
2. That the duty of care owed him was breached by the doctor
3. That he suffered harm as a result of the breach of the duty of care by the doctor. This is also referred to as ‘causation’.

6.2 Duty of care

A duty of care is often easy to establish. Legally, a duty of care arises when the doctor accepts to treat the patient. In Asantekramo, the fact that the OkomfoAnokye hospital and its doctors accepted to, and proceeded to treat the patient established that the hospital and the treating doctors accepted and owed a duty of care to the patient. This is also the case in Asafo, where the Catholic Hospital of Apam and its doctors, by accepting to treat and admitting the six week old baby into their care established a duty of care.

6.3 Breach of duty of care

The duty of care is said to have been breached if the standard of care provided by the doctor falls below that expected of the doctor by law. It is important to note that the occurrence of an adverse outcome alone does not establish that the duty of care has been breached. To establish that a breach of duty of care has occurred, most courts in the world, including those in Ghana, use a principle established in a case brought by Mr. Bolam against the Friern Hospital Management Committee in the United Kingdom in 1957. This principle has become known as the 'Bolam principle' or 'Bolam test'.

The Bolam test is used to distinguish those situations where an adverse outcome is simply the chance materialization of an existing risk, from those situations where the adverse outcome occurs as a result of the doctor not deploying due skill and attention. Mr. Bolam, a claimant, who was a voluntary patient at a mental health institution run by Friern Hospital Management Committee, had undergone Electro-Convulsive Therapy (ECT) at the Friern Hospital and sustained a fracture to one of his hip bones; the acetabulum. During the procedure, no muscle relaxant drugs were administered to him, nor were any restraints used to control the convulsive movements which happen during ECT. He sued for compensation. He argued that the hospital was negligent for; not issuing muscle relaxants; not restraining him; and not warning him about the risks involved. At that time professional practice varied widely about the use of drugs and physical restraint, and in relation to whether patients should be warned of the risk of fractures. McNair J, the judge, summed up the case to the jury who then found in favour of the defendant (the hospital). In his summary he noted that expert witnesses had confirmed that much medical opinion was opposed to the use of muscle relaxant drugs, and that manual restraints could sometimes increase the risk of fracture. Moreover, it was common practice of the profession to not warn patients of the risk of treatment (when it is small) unless they are asked. He held that what was common practice in a particular profession was relevant to the standard of care required, and that a person falls below the appropriate standard, and is negligent, if he fails to do what a reasonable person would in the circumstances. **McNair J then said**; ''it is just a question of expression. I myself would prefer to put it this way, that he is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a reasonable body of medical men skilled in that particular art. I do not think there is much difference in sense. It is just a different way of expressing the same thought. Putting it the other way round, a man is not negligent if he is acting in accordance with such a practice, merely because there is a body of opinion who would take a contrary view. At the same time, that does not mean that a medial man can obstinately and pig-headedly carry on with some old technique if it has been proved to be contrary to what is really a substantially the whole of informed medical opinion. Otherwise you might get men today saying: "I do not believe in anaesthetics. I do not believe in antiseptics. I am going to continue to do my surgery in the way it was done in the eighteenth century". That clearly, would be wrong"
In essence, the Bolam principle, is that; 'A doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by other responsible or reasonable body of doctors'. That is, as long as a doctor's practice is endorsed by other responsible doctors he will not breach his duty of care.

6.4 Case 1

Asantekramo alias Kumah v. Attorney-General

[1975] 1 GLR 319 is a medical negligence case that is reported in the Ghana Law Report. The case was heard before the High Court in Kumasi.
The basic facts of the case were that a female patient of the then OkomfoAnokye Hospital had an arm amputated following an operation for an ectopic pregnancy. A successful action for negligence was brought against the hospital. The article discusses the trial of this case and looks at some of the possible issues the hospital could have raised to defend itself. It comments on what appear to have been some fundamental errors made by the judge which appear to have gone unchallenged, which may have resulted in heavy damages awarded against the hospital. It comments on the need for doctors, other health workers and health institutions to defend themselves where appropriate, recognising however that not all cases are defensible.

Asantekramo, alias Kumah v. Attorney-General, a case decided by the High Court Kumasi in 1975 is well known amongst lawyers in Ghana. For doctors, it should be of great interest because it is one of the very few medical negligence cases which has been decided by Ghanaian courts and officially reported. Of course many cases have gone to the Medical and Dental Council, some to Commission for Human Rights and Administrative Justice (CHRAJ) and

some have been looked at by other administrative and disciplinary bodies. Court cases are especially important because they establish legal precedent which is used to decide future cases. They thus help develop the law in the particular field.

The facts of Asantekramo are essentially that in 1967, a 19 year old woman was diagnosed as having a ruptured ectopic pregnancy in a private clinic in Kumasi and was referred to the then OkomfoAnokye Hospital (now the KomfoAnokye Teaching Hospital). The surgery was successful but the arm of the patient in which the intravenous line was set subsequently became gangrenous and infected and needed to be amputated. Eight years after the incident the courts gave judgment for the patient and awarded heavy damages against the hospital. When a patient is injured in the course of clinical care, is it necessarily and automatically to be regarded as negligence on the part of the health care team? Obviously not - certain medical and surgical procedures carry certain known and inherent risks and even when performed under the best of conditions by the most experienced personnel, can still end up with complications. It is also clear that the state of the patient may also contribute to the risk of the procedure or treatment ending up with complications.

In the case of Hucks v Cole, an English case decided in 1968 but reported much later in (1993) 4 Med. L.R. 393, the court stated that ‘’ with the best will in the world, things do sometimes go amiss in surgical operations or medical treatment….So a doctor is not to be held negligent simply because something goes wrong.”
In the case of Asantekramo, it would appear that failure of the hospital to adequately defend itself may have contributed to judgment being given against it. Of course this opinion is based solely on the reading of the case as reported in the Ghana Law Reports and there may have been other factors considered which were not mentioned which may have influenced the case ending the way it did. It would also appear that the judge made certain incorrect interpretations of the medical facts that led to his making the judgment he did and this may also be a result of the hospital failing to put up a good defence. There is not enough time and space here to discuss all the problems in this case (and there are several of them) but there a few that are particularly worth noting. One of the main issues in this case was how the bacteria which caused the infection managed to get into the lady’s arm.
The surgeon who did the amputation when explaining how the arm of the lady got infected said;
‘’ it is my opinion that the bacteria got into the body by the [only] possible route of entry, namely, through the needle or the drip set. If the needle is sterilized then it is not possible for the bacteria to get in through the needle but of course if the drip itself is contaminated or its container is contaminated, then although the needle is sterilized the bacteria may nevertheless get into the body."
The judge, most likely based on this and other similar medical testimony said: “Now the medical evidence is that the bacteria is foreign to the body and must have come from outside”.

7.0 RECOMMENDATION:

A thorough study about many cases of medical negligence or malpractice clearly shows the thin line of the understanding of medical procedures to the legal profession; judges and lawyers and likewise how medical doctors who are believed to be the highest trained professionals understand the basics of law on malpractice, negligence and other court proceedings. In spite of this, the writer thinks in training medical doctors, although they study medical jurisprudence, it is not detailed enough to propel them to face issues of malpractices and negligence. The medical jurisprudence course should be revised and improved on it to abreast with the changing world.Secondly arbiters of law; judges, magistrates, lawyers should also be given detailed training on the legal aspects of health care and how the complex health system functions.The writers think special law courts should be set up to hear and try cases of medical malpractice and negligence due to the complex nature of health care professionals and the health care structure.

8.0 CONCLUSION:

Africa has a lot of medical malpractice and negligence cases as a result of what the writer called the **lanquerism theorem**. Lack of skilled labor prevents these people who become vulnerable to such cases fail to report since the community may not support them. Also the fear of unknown and inferiority complex makes these affected victims become depressed, ill hearted and some even die because of the trauma they go through. It is our hope that there would be more education on the civic rights of individuals and criminal proceedings. Some aspects of Law been a “common” program should be mad e available even at the junior high school level for the public to know much about their human rights and its abuse and this will help everybody work accordingly to bring a healthy and well-structured population.

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