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**BEFORE THE ARIZONA MEDICAL BOARD**

In the Matter of:

**R. RICHARD MAXWELL, M.D.**

Holder of License No. 7468  
For the Practice of Allopathic Medicine  
In the State of Arizona,  
  
Respondent.

Board Case No. MD-95-0883

**AMENDED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER FOR DECREE OF  
CENSURE AND CIVIL PENALTY**

R. Richard Maxwell, M.D., holder of License No. 7468 for the practice of medicine in Arizona, appeared with legal counsel, Daniel Jantsch, before the Arizona Medical Board ("Board") for an informal interview on May 7, 1997. The Board issued Findings of Fact, Conclusions of Law and Order for a Decree of Censure and Civil Penalty on May 14, 1997 ("Order").

Dr. Maxwell appealed the Board's Order. On February 13, 2002, the Maricopa County Superior Court affirmed the Board's Order in part, reversed it in part and remanded the matter back to the Board for reconsideration of its penalty. Dr. Maxwell appealed the Judgment entered by the Superior Court. On January 30, 2003, the Arizona Court of Appeals affirmed the Judgment entered by the Superior Court. Dr. Maxwell appealed the Court of Appeals decision. On September 11, 2003, the Arizona Supreme Court denied Dr. Maxwell's petition for review.

On January 14, 2004, the Board re-considered its penalty in light of the Judgment entered by the Superior Court and adopted the following Amended Findings of Fact, Conclusions of Law and Order ("Amended Order"), which replaces the Board's original Order of May 14, 1997:

1 **FINDINGS OF FACT**

2 1. The Board is the duly constituted authority for licensing and regulating  
3 the practice of allopathic medicine in the State of Arizona.

4 2. R. Richard Maxwell, M.D., is the holder of License No. 7468 for the  
5 practice of allopathic medicine in the State of Arizona.

6 3. In November 1995, the State Compensation Fund (the "Fund") notified  
7 Dr. Maxwell of its concerns regarding billings from "RRM/Rehab" submitted by Dr.  
8 Maxwell. A letter from the Fund's Medical Audit Payment supervisor dated  
9 November 24, 1995 stated that notes provided with the billings were not signed,  
10 which left no means of verifying who performed the treatment. Moreover, the notes  
11 failed to contain even the name or location of the facility where treatment was  
12 performed. The Fund's second concern with the records was that they were not  
13 legible and "[w]hat little we can make out of the notes fails to support the billed  
14 charges." The third concern was routine use of the osteopathic manipulation billing  
15 codes 98926, 98927 and 98928 the diagnostic code 724.2 (lumbago). The Fund  
16 stated that it required a signature and credentials of the provider before it would  
17 process the bills for payment and would flag and manually review bills from his  
18 practice to validate the appropriate use of codes and legible documentation to  
19 support he billed charges. The Fund sent a copy of its November 24th letter to the  
20 Board to provide notice of its concerns.

21 4. On December 14, 1995, the Board notified Dr. Maxwell in writing of the  
22 Fund's Complaint, and requested that he provide a complete narrative statement  
23 and complete copies of the patients' medical records, office billings and  
24 correspondence.

25 5. Dr. Maxwell responded with a cover letter Dated December 22, 1995,  
26 enclosing a copy of his letter to the Fund dated December 10, along with

1 incomplete patient records and billings. His letter to the Fund stated, among other  
2 things, that "we were not aware" that the bills had not been signed. He also stated  
3 that "the treatment being performed in our therapy department is being performed  
4 by Bryant G. Snow", a chiropractor and licensed physical therapist, the others under  
5 Dr. Maxwell's supervision.

6         6.       On December 29, 1995, Board staff responded to Dr. Maxwell's letter,  
7 again requesting complete medical records, complete billings and a complete  
8 narrative statement regarding his care and treatment of the six named patients. He  
9 was also asked to respond to allegations of insufficient documentation and billing  
10 for unauthorized services such as psychotherapy. Two subpoenas were enclosed,  
11 one for complete records, billing, correspondence, narrative statement for 35  
12 named patients, and one for the full names, titles and association to his practice of  
13 all personnel who provide services to Orthopedic Surgery Affiliates (the name listed  
14 on his letterhead) and RRM/Rehab, the name used on some billings.

15         7.       On January 31, 1996, Dr. Maxwell sent information about Barbara  
16 Maxwell, a student extern; Dr. Snow, a chiropractor; Martine Romeo, a  
17 thermographer, and Karen Tibbits, a physical therapy technician. By letter to Dr.  
18 Maxwell dated February 7, 1996, Board staff asked what Dr. Maxwell's relationship  
19 was to Barbara Maxwell, and whether his patients were informed that she was a  
20 non-licensed student. Staff also asked whether the Fund authorized patients N.L.,  
21 L.L. and R.M. to receive treatment from Ms. Maxwell, and requested additional  
22 information regarding his staff. Board staff requested that Dr. Maxwell respond by  
23 February 16, 1996. In a response dated February 13, 1996, Dr. Maxwell stated that  
24 he had no relationship with Ms. Maxwell other than professional. He also stated  
25 that "she informs her patients that she is a doctoral candidate in psychology and is  
26 supervised by Dr. O'Connell." (Dr. O'Connell is a psychologist.) He also stated that

1 "[i]t is our practice to seek pre-approval from the State Compensation Fund for  
2 therapy we feel is indicated and necessary. But, we provide health care on the  
3 basis of need irrespective of payment by State Comp."

#### 4 Billing Codes

5 8. Physicians who attend injured employees covered by the Workers  
6 Compensation Act are required by law to charge according to a schedule of fees  
7 adopted by the Industrial Commission of Arizona. ("ICA"). According to the ICA  
8 Physicians' Fee Schedule, accurate calculation of fees based upon the schedule,  
9 filing monthly reports and bills for payment, and the use of prescribed forms are  
10 essential to early and correct remuneration for services, and can be vital in the  
11 award of benefits to working persons and their dependent children.

12 9. The billing codes used in the ICA Fee Schedule conform to the  
13 *Physicians' Current Procedural Terminology*, Fourth Edition ("CPT"), published by  
14 the American Medical Association. In addition to the CPT codes, the ICA uses  
15 some unique codes regarding administrative and billing procedures under the  
16 Arizona worker's compensation program.

17 10. The ICA Fee Schedule specifies that "No fees may be charged for  
18 services not personally rendered by the physician, unless otherwise specified." The  
19 term "physician" in relation to workers' compensation cases includes doctors of  
20 medicine, osteopathy, chiropractic, and naturopathic medicine. Only physicians  
21 and surgeons licensed in Arizona are permitted to treat injured or disabled  
22 employees under ICA jurisdiction, unless others are specifically authorized.  
23 Physical medicine and rehabilitation services may be performed by a physician, a  
24 licensed health care professional within the scope of his or her license, a licensed  
25 physical therapist, or a physical therapy aide, attendant, or assistant under the on-  
26 site supervision of a licensed physical therapist.

1           11. The amount of fee for workers compensation cases is to be calculated  
2 by multiplying the unit value (listed under the specific code number for a specific  
3 procedure) by the conversion factor established for each section in the Fee  
4 Schedule.

5           12. Regarding medical record keeping, the ICA Fee Schedule states as  
6 follows:

7                   Physicians and physical therapists shall provide legible  
8 medical documentation and reports which will be  
9 sufficient for insurance carriers/self-insured employers to  
10 determine if treatment is being directed towards injuries  
11 sustained in an industrial accident or incident. The  
12 physician and physical therapist shall ensure that their  
13 patients' medical files include the information required by  
14 A.R.S. § 32-1401.2.<sup>1</sup>

15           13. *Physicians' Current Procedural Terminology* is listing of descriptive  
16 terms and identifying codes for reporting medical services and procedures  
17 performed by physicians. The purpose of the terminology is to provide a uniform  
18 language that accurately describes medical, surgical and diagnostic services. The  
19 system of terminology is a widely accepted nomenclature for reporting physician  
20 procedures and services under government and private health insurance programs  
21 and for claims processing.

22           14. The description of procedures and services in the CPT code manual  
23 is based on Evaluation and Management Service Guidelines, which divide services  
24 into categories and levels. The proper billing code is determined by first identifying  
25 the category of service, such as office visit, hospital visit, or consultation, and then  
26 determining the level of service provided. The categories and subcategories of

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<sup>1</sup> A.R.S § 32-1401(2) states as follows: "Adequate records" means legible medical records containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment.

1 service, identified by level of service, are identified by five digit codes. According  
2 to the CPT code manual, any service or procedure should be adequately  
3 documented in the medical record.

4 15. The CPT levels of services are based on the following seven  
5 components: history, examination, medical decision making, counseling,  
6 coordination of care, nature of presenting problem and time. The first three  
7 components (history, examination, and medical decision making) are considered  
8 the key components designating a level of services. The next three components  
9 (counseling, coordination of care, and the nature of the presenting problem) are  
10 considered contributory factors in the majority of patient encounters. Counseling  
11 and coordination of care need not be provided at every patient encounter.

12 16. The level of service is determined by the extent of history obtained, the  
13 extent of examination performed, and the complexity of medical decision making.  
14 The extent of the history and examination is dependent upon the clinical judgment  
15 and on the nature of the presenting problems. The CPT code manual recognizes  
16 four types of history and examination: problem focused, expanded problem  
17 focused, detailed, and comprehensive. Medical decision making in the CPT code  
18 manual refers to the complexity of establishing a diagnosis or management option.  
19 It is measured by the number of possible diagnoses or management options; the  
20 amount or complexity of data to be reviewed, and the risk of complications,  
21 morbidity, or mortality. Medical decision making is classified as straightforward, low  
22 complexity, moderate complexity, or high complexity.

23 Patient J. B.

24 17. Patient J. B., a 63 year old male, who was injured in a fall in July 1994,  
25 was first seen at Dr. Maxwell's office on August 24, 1995. Dr. Maxwell's records for  
26 the initial visit consist of a one-half page typed note, some illegible handwritten

1 notes on an examination form, a patient questionnaire, and examination check  
2 sheet. The patient stated that his problem was pain in the back, neck, head, leg,  
3 arm and feet.

4 18. The typed note for the first visit stated that x-rays showed disc  
5 degeneration at L3-4, L4-5 with multiple spondylitic changes throughout the lumbar  
6 spine. For case management, Dr. Maxwell recommended that the patient continue  
7 conservative care, and discontinue all medications except Voltaren. He added that  
8 he would "[s]end him for remedial exercises and physical therapy and see if we can  
9 improve him." Dr. Maxwell billed \$175 for the visit, which he coded 99205.

10 19. The 99205 code is used for an office visit for evaluation and  
11 management of a new patient. It requires a comprehensive history, comprehensive  
12 examination, and medical decision-making of high complexity. According to the  
13 CPT code manual, for code 99205, the presenting problems are usually of  
14 moderate to high severity and the physician typically spends 60 minutes face-to-  
15 face with the patient or family. A comprehensive history is defined in the CPT code  
16 manual as one including the chief complaint; extended history of present illness;  
17 review of systems directly related to the problems identified and review of all  
18 additional body systems; and complete past, family, and social history. A  
19 comprehensive examination is defined in the CPT code manual as a general multi-  
20 system examination or complete examination of a single organ system. To qualify  
21 as medical decision making of high complexity, the number of diagnoses or options  
22 must be extensive, the amount of data must be extensive and the risks must be  
23 high. Dr. Maxwell's records do not support the use of the 99205 code for the  
24 patient's initial visit.

25 20. On August 29, 1995, Dr. Maxwell billed \$100 for an intermediate office  
26 visit under the code 99214. According to the CPT manual, use of the 99214 office

1 visit code requires a detailed history, a detailed examination, and medical decision  
2 making of moderate complexity. Usually, the problems presented are of moderate  
3 to high severity, and the physician typically spends 25 minutes face-to-face with the  
4 patient or family. The records provided by Dr. Maxwell do not contain an entry for  
5 any office visit on August 29, 1995, and therefore do not support the billing.

6 21. The patient began physical therapy treatments on August 29, 1995 and  
7 continued for twenty-eight visits for therapy through November 1, 1995.

8 22. On November 16, 1995, the office note for an office visit consists of  
9 seven typed lines with no physical examination. The visit was coded 99215, an  
10 extended office visit, and billed at \$95. According to the CPT code manual, use of  
11 the 99215 office visit code requires a comprehensive history, a comprehensive  
12 examination, and medical decision making of high complexity. Usually, the  
13 problems presented are of moderate to high severity, and the physician typically  
14 spends 45 minutes face-to-face with the patient or family. Dr. Maxwell's records do  
15 not support the billing.

16 23. On October 19, 1995, using the name "RRM/Rehab", Dr. Maxwell billed  
17 the State Compensation Fund for the following services on October 12, 17 and 18,  
18 1995:

<u>Code</u>	<u>Charge</u>	<u>Dr. Maxwell's Description</u>
98928	\$85	manipulation/7-8 regions
97250	\$25	trigger point therapy
97118	\$27	electrical stimulation, manual
97010	\$25	hpt or cold packs
97014	\$25	interferential therapy

23 24. According to the ICA, 98928 may be used only for treatment performed  
24 by an osteopath, and the 97250 code is for myofascial release/soft tissue  
25 mobilization. Code 97118 has been deleted from the ICA Fee Schedule. Code  
26 97014 is for electrical stimulation in the Fee Schedule.

1           25. For physical medicine services, the ICA Fee Schedule states that when  
2 multiple modalities (97010), multiple therapeutic procedures (97110 through 97139  
3 and 97530) , or combination of modalities and therapeutic procedures are  
4 performed, the first modality or procedure shall be reported as listed. The second  
5 modality or procedure shall be identified by adding modifier "-51" to the code  
6 number. The second and each subsequent procedure shall be valued at the  
7 appropriate percentage of its listed value as follows:

- 8           100% - Full value for the first modality or therapeutic procedure
- 9           50% - For the second modality or therapeutic procedure
- 10          25% - For the third modality or therapeutic procedure
- 10% - For the fourth modality or therapeutic procedure
- 5% - For the fifth modality or therapeutic procedure

11 Any additional modalities or therapeutic procedure must have prior approval of  
12 insurance carrier or self-insured employer. The multiple procedure rule applies to  
13 the different procedures that are performed, not their individual time increments.  
14 Dr. Maxwell did not bill multiple modalities and procedures in accordance with the  
15 listed percentages.

16           26. "RRM/REHAB" was typed on the health insurance claim form (HCFA  
17 1500) in item 31, "Signature of Physician or Supplier, including degrees and  
18 credentials", and in item 33, "Physician's, Supplier's Billing Name, Address, Zip  
19 Code and Phone #." The forms were not signed. The name of the person who  
20 performed the services is not stated on the form or in the chart. According to a  
21 computer print-out of services provided by Dr. Maxwell, R.B. received services from  
22 persons identified as Doctors Number 1, 4, and 8. Doctor Number 1 is apparently  
23 Dr. Maxwell. Dr. Maxwell informed the Board that some services were performed  
24 by Bryant Snow, D.C., a chiropractor and physical therapist. The records provided  
25 by Dr. Maxwell do not contain notes identified as Dr. Snow's and do not identify the  
26 third provider.



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97261	\$65	(Chiropractic manipulation)
97250	\$25	(Myofacial release)
97014	\$25	(No such code)
97010	\$20	(Therapeutic procedure)

On January 17, 1996, Dr. Maxwell re-billed the services with the same billing he sent October 12, 1995, *i.e.*, using the 98927 code (osteopathic manipulation).

31. Dr. Maxwell's records do not support the billings.

Patient L.S.L.

32. L.S.L., is a 31 year old female who suffered a back injury on January 26, 1995. Her initial visit to Dr. Maxwell was apparently May 1, 1995. Dr. Maxwell's report consisted of a 1/2 page typed letter. He recommended epidural steroids. Coding was 99243, \$140. Code 99243 is used for office or other out patient consultations of a new or established patient, requiring three key components: a detailed history; a detailed examination; and medical decision making of low complexity. For this code, the presenting problems are usually of moderate severity and the physician typically spends 40 minutes face-to-face with the patient.

33. For an office visit on May 25, 1995, the office record is twelve typewritten lines. The only examination was knee and ankle jerks. The short handwritten note for June 22, 1995 is illegible. The three typewritten lines for that visit show no physical examination.

34. On July 27 there was an office visit with seven typewritten lines and on August 24 an office visit with thirteen typewritten lines. Those visits were coded 99215 (extended office visit) and charged at \$95. On August 25, 1995 Dr. Maxwell billed for an office visit with 99212, \$50, but the chart contains no note of an office visit. For an office visit on October 2, the chart contains some handwriting and seven typewritten lines with no physical examination. For a visit on October 30, there are nine typewritten lines; the only examination was straight leg raising, and

1 surgery was suggested. On November 20 although the office notes states "hurt left  
2 shoulder", a back history and exam were recorded, but no shoulder examination  
3 was noted. The visits were all coded 99215 (extended office visit), \$95.

4 35. Between August 25 and November 7, 1995, the patient had about  
5 twenty-eight visits. On November 17, 1995, she had a "medical psychotherapy"  
6 visit, accomplished by a Barbara Maxwell, M.A. Ms. Maxwell was a doctoral student  
7 in the psychology program at Arizona State University. The medical records do not  
8 document that the patient was informed that Ms. Maxwell was a student trainee,  
9 that the patient was referred for psychological evaluation, or that Ms. Maxwell was  
10 approved as a treating psychotherapist. The initial report, just over one page in  
11 length, was dated December 1, 1995 and changed to November 17, 1995 by Ms.  
12 Maxwell. The visit was coded 90844, psychotherapy, \$100. There are further  
13 "psychotherapy" visits on December 8, (a two line note) and on December 12 (a five  
14 line note). Both were billed as 90844, \$100.

15 36. Dr. Maxwell's records do not support the billings.

16 Patient R.M.

17 37. Patient R.M., a 30 year old male, was injured on September 16, 1992.  
18 he had had prior back surgery before he saw Dr. Maxwell on November 21, 1994  
19 with a complaint of low back pain. Dr. Maxwell billed the visit as 99205 (new patient  
20 extended office visit), \$175, and wrote a report that was two-thirds of a page in  
21 length. On January 16, 1995, the patient made an office visit, which Dr. Maxwell  
22 billed as 99215 (new patient extended office visit, established patient), \$78. His  
23 office note was six lines long and fails to indicate that a physical examination was  
24 performed. For an office visit on March 13, 1995 in which the only physical exam  
25 noted was reflexes, Dr. Maxwell wrote five lines, billed as 99215, \$78. For an office  
26 visit on June 12, 1995, he wrote nine lines, and billed as 99215, \$95.



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Patient M.R.

42. Patient M.R., was a 35 year old male with two prior low back surgeries. He apparently first saw Dr. Maxwell on may 9, 1994. Dr. Maxwell billed the first five office visits as 99215 (extended office visit), \$95 each. His notes ranged in length from five lines to one page. All visits did not include notes of physical examination. The records do not support the billings.

Patient I.G.

43. Patient I.G., was a 37 year old male with low back complaints who was injured in December 1987. Dr. Maxwell's note for the initial visit consists of 14 typewritten lines, illegible handwritten notes, and a questionnaire. No reflexes or motor or sensory testing are documented. He billed the visits 99245, \$261. Code 99245 is the highest level of office consultation, requiring comprehensive history, comprehensive examination, and medical decision making of high complexity. Usually the presenting problems are of moderate to high severity and the physician typically spends 80 minutes face-to-face with the patient or family. The patient had an office visit on January 17, 1994. The record contains two dictated notes for that date, one five lines in length with no physical examination, and the second 21 lines in length with one and a half lines regarding examination of the back. The visit was coded 99215, \$78. For an office visit on May 5, 1994, with a note of 34 lines, Dr. Maxwell recommended steroid epidurals. The visit was coded 99215, \$78. The records do not support the billings.

44. On February 21, 1994, the patient was examined by neurosurgeon John J. Kelley, M.D., who noted that the patient was an insulin-dependent diabetic and that epidural steroids were contra-indicated.

45. In an informal interview before the Board on March 14, 1997, Dr. Maxwell stated, " I believe after reviewing the complaints, that my documentation

1 would not support the codes that were charged."

2 Past Actions

3 46. The Board issued Dr. Maxwell a Letter of Concern on March 22, 1984  
4 for inadequate surgical follow-up on a patient, and decisions preoperatively and  
5 postoperatively that were not adequately documented in the patient records. On  
6 November 21, 1991, the Board issued Dr. Maxwell a Letter of Concern for poor  
7 record keeping and excessive prescribing of controlled substances. On December  
8 6, 1995, the Board issued Dr. Maxwell a Letter of Concern for improper  
9 use/monitoring of Coumadin.

10 CONCLUSIONS OF LAW

11 1. The Board possesses jurisdiction over the subject matter and over  
12 Respondent pursuant to A.R.S. § 32-1401 *et seq.*

13 2. The conduct and circumstances described above constitute  
14 unprofessional conduct pursuant to AR.S. § 32-1401(25)(e) (failing or refusing to  
15 maintain adequate records on a patient).

16 3. The conduct and circumstances described above constitute  
17 unprofessional conduct pursuant to A.R.S. § 32-1401(25)(q) (any conduct or  
18 practice which is or might be harmful or dangerous to the health of the patient or the  
19 public).

20 4. The conduct and circumstances described above constitute  
21 unprofessional conduct pursuant to A.R.S. § 32-1401(25)(u) (charging a fee for  
22 services not rendered).

23 5. The conduct and circumstances described above constitute  
24 unprofessional conduct pursuant to A.R.S. § 32-1401(25)(dd) (failing to furnish  
25 information in a timely manner to the Board or its investigators or representatives  
26 if legally requested by the Board).

1 ORDER

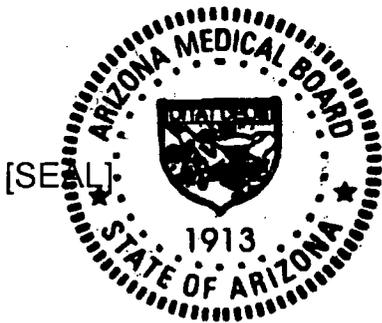
2 Based on the above findings of fact and conclusions of law and pursuant to  
3 the authority granted to the Board by A.R.S. § 32-1451(H) and (K),  
4

5 IT IS HEREBY ORDERED that Respondent shall be issued a Decree of  
6 Censure;

7 IT IS ALSO ORDERED that Respondent shall pay a civil penalty in the  
8 amount of ten thousand dollars (\$10,000.00) within six (6) months of the date of this  
9 Order.

10 This Order is the final disposition of Board Case No. MD-95-0883.

11 DATED this 9<sup>th</sup> day of February, 2004.



ARIZONA MEDICAL BOARD

17  
18 By: *Barry A. Cassidy*  
19 BARRY A. CASSIDY, Ph.D., P.A.-C  
20 Executive Director

21 ORIGINAL OF THE FOREGOING FILED  
22 this 9<sup>th</sup> day of FEBRUARY, 2004, with:

23 Arizona Medical Board  
24 9545 E. Doubletree Ranch Road  
25 Scottsdale, AZ 85258

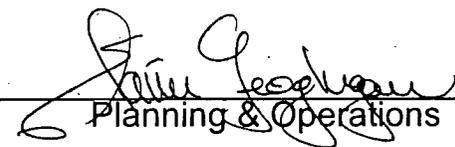
26 EXECUTED COPY OF THE FOREGOING  
MAILED BY CERTIFIED MAIL  
this 9<sup>th</sup> day of FEBRUARY, 2004, to:

Robert R. Maxwell, M.D.  
Respondent  
(Address of Record with the Board)

1 EXECUTED COPY OF THE FOREGOING MAILED  
this 9<sup>th</sup> day of FEBRUARY, 2004, to:

2  
3 Stephen W. Myers  
4 T. Dawn Farrison  
5 MYERS & JENKINS, P.C.  
6 3003 N. Central Avenue Suite 1900  
7 Phoenix, Arizona 85012  
8 Attorneys for Dr. Maxwell

6 Stephen A. Wolf, Esq.  
7 Assistant Attorney General  
8 1275 W. Washington Street, CIV/LES  
9 Phoenix, AZ 85007  
10 Attorneys for the State of Arizona

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12 Planning & Operations

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