

James J. Belanger (011393)
Kathy A. Steadman (013102)
Scott M. Bennett (022350)
COPPERSMITH BROCKELMAN PLC
2800 North Central Avenue, Suite 1200
Phoenix, Arizona 85004
(602) 224-0999 (Phone)
(602) 224-6020 (Fax)
jbelanger@cblawyers.com
ksteadman@cblawyers.com
sbennett@cblawyers.com

Attorneys for Maricopa Ambulance, LLC

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

Maricopa Ambulance, LLC,
Applicant.

Matter No. 2015A-EMS-0190-DHS

**MARICOPA AMBULANCE LLC'S
AMENDED OBJECTIONS TO
AMERICAN MEDICAL RESPONSE
OF MARICOPA'S AMENDED
REQUEST FOR ISSUANCE OF
SUBPOENA DUCES TECUM, AND
MOTION TO QUASH**

(The Honorable Diane Mihalsky)

Maricopa Ambulance, LLC, submits the following amended objections to American Medical Response of Maricopa's Amended Request for Issuance of Subpoena Duces Tecum. The amended request is directed to Maricopa Ambulance as well as its CEO, Bryan Gibson; Maricopa Ambulance files these objections on behalf of both itself and Mr. Gibson. Maricopa Ambulance also moves to quash AMR's subpoena in part.¹

¹ This motion is timely. AAC R2-19-113, which addresses subpoenas, requires a party to file objections to a subpoena within 5 days after service. AAC R2-19-113(D). Maricopa Ambulance did that, by filing its original objections to the AMR subpoena on July 31. The rules also

Maricopa Ambulance and AMR have conferred about Maricopa Ambulance’s objections to the AMR subpoena, and have been able to narrow the areas of dispute substantially. They have agreed on the required scope of production in response to request Nos. 1 through 12. Below, Maricopa Ambulance has articulated the scope of the documents it can and will produce in response to each of those requests. Because the two parties have reached agreement on those requests, there is no need for a ruling from the ALJ on those items.²

Maricopa Ambulance and AMR have not yet been able to agree on the required scope of production in response to request Nos. 13 and 14. Because there is no agreement on those requests, Maricopa Ambulance moves to limit No. 13 as explained below, and to quash No. 14 in its entirety.

Finally, although the two parties have not been able to reach an agreement regarding request No. 15, Maricopa Ambulance does not possess any responsive documents, as explained below. There is, therefore, no need for a ruling on that item.

allow—but do not require—motions to quash. *See* AAC R2-19-106(A) (“Motions may be made for rulings such as: . . . 5. Quashing a subpoena pursuant to R2 -19-113”). R2-19-106 also imposes the time limit for motions—“written motions shall be filed with the Office at least 15 days before the hearing.” R2-19-106(C). On August 13, counsel for Maricopa Ambulance and AMR had an extended conversation about each sides’ objections to the other’s subpoena. Although the parties made progress during that conversation, they were unable to reach a firm agreement on the scope of Maricopa Ambulance’s responses to certain items in the AMR subpoena. Maricopa Ambulance has therefore filed these amended objections and motion. This motion is being filed before the subpoena responses. Maricopa Ambulance and the intervening parties have agreed to extend the deadline for all of their subpoena responses (not objections) to August 21, and plan to file a stipulation to that effect.

General Objection

Maricopa Ambulance objects to the timeframe in the requested subpoena. The subpoena would require the production of all responsive documents no later than seven days after service. The proposed subpoena is extremely broad, and would require Maricopa Ambulance to provide a large amount of materials from a number of custodians and sources. Maricopa Ambulance will respond to as many of the non-objectionable requests within seven days of service, but might require additional time to complete the production.

Without waiving this objection, Maricopa Ambulance and the intervening parties have agreed to extend the deadlines for all of their subpoena responses until August 21. They will file a stipulation to that effect shortly.

Request No. 1: All documents regarding the legal formation and operation of Maricopa Ambulance, LLC. This request includes production of articles of incorporation, corporate minutes, operating agreement(s), stock issuance, member list, capital account and prospectus documents.

Objection: Maricopa Ambulance objects to this request as overly broad, vague, ambiguous, and unduly burdensome. Although the request gives some specific examples of the types of documents that might fall within the request, it is not limited to those documents. This is a very broad request, and the exact scope of it is uncertain, which as a

² If AMR were to contest the parties' agreement on those requests, Maricopa Ambulance would ask the ALJ to consider this a motion to limit those requests as set forth in Maricopa Ambulance's objections to each one.

practical matter would make it very difficult for Maricopa Ambulance to comply, because it is difficult to determine the outer bounds of the request.

Without waiving these objections, Maricopa Ambulance is willing to produce any documents in its possession that are similar to the specific examples given in the request.

Request No. 2: All documents relating to or pertaining to the financial capitalization of Maricopa Ambulance, LLC. This request includes promissory notes, checks, wire transfers, bank deposits, pledges, letters of credit, property, capital account funding and loans.

Objection: See objection to request No. 1.

Request No. 3: All documents provided by Maricopa Ambulance, LLC or its attorneys/staff to any non-employee listed as a witness by Maricopa Ambulance, LLC. This requests [sic] includes [sic] emails and documents provided whether the transmission was electronic or via hard copy transmission.

Objection: Maricopa Ambulance objects to this request as overly broad, vague, ambiguous, and unduly burdensome. This request is not limited as to timeframe or subject matter. Some of the non-employees listed as witnesses by Maricopa Ambulance have consulted or corresponded with the company in past matters that are completely unrelated to the current CON application.

Without waiving these objections, Maricopa Ambulance is willing to produce emails or documents sent by Maricopa Ambulance or its attorneys to any non-employee listed as a witness, and that relates to the witness's potential testimony in this matter.

Request No. 4: All documents received by Maricopa Ambulance, LLC or its attorneys/staff from any non-employee listed as a witness by Maricopa Ambulance, LLC.

This request includes emails and documents provided whether the transmission was electronic or via hard copy transmission.

Objection: See objection to request No. 3.

Request No. 5: The complete file for each expert witness listed by Maricopa Ambulance, LLC whether the file is kept in an electronic or hard copy.

Objection: Maricopa Ambulance objects to this request as overly broad, vague, ambiguous, and unduly burdensome. This request is not limited as to timeframe or subject matter, does not define “file,” and does not specify which of Maricopa Ambulance’s proposed witnesses would qualify as an “expert witness” for purposes of this request. Some of the third-party witnesses listed in Maricopa Ambulance’s disclosure have communicated or consulted with the company in the past on matters unrelated to the current CON application. Without waiving these objections, Maricopa Ambulance is willing to produce electronic and hard copy materials in the possession of the following witnesses, and that relate to the witness’s potential testimony in this matter: Robert De Luca, Jeff Goldberg, Doug Hooten, Rick Keller, Stan McLemore, and Matt Zavadsky.

Request No. 6: All documents, contracts or writings of any type between Maricopa Ambulance, LLC and Nextcare Urgent Care Centers a/k/a Nextcare Holdings relating to the proposed posting of Maricopa Ambulance, LLC ambulances at Nextcare facilities.

This request seeks all documents related to the letter dated February 10, 2015 from John Julian to Will Humble attached to the application in this matter.

Objection: Maricopa Ambulance objects to this request on the basis of relevance. Without waiving this objection, Maricopa Ambulance will produce any responsive documents.

Request No. 7: All documents, contracts or writings of any type Between [sic] Maricopa Ambulance, LLC and Nextcare Urgent Care Centers a/k/a/ Nextcare Holdings relating to the contractual relationship or proposed contractual relationship between the entities as set forth in the letter of February 10, 2015 from John Julian to Will Humble attached to the application in this matter.

Objection: See objection to request No. 6.

Request No. 8: All documents pertaining to alleged “substandard performance” by the American Medical Response of Maricopa, LLC.

Objection: Maricopa Ambulance objects to this request as overly broad, vague, ambiguous, and unduly burdensome. Maricopa Ambulance further objects because many of the materials that are relevant to the issue of public necessity have been requested from AMR and other entities through Maricopa Ambulance’s proposed subpoenas duces tecum; Maricopa Ambulance cannot produce those materials until it has received responses to its subpoenas.

Without waiving these objections, Maricopa Ambulance is not currently aware of any responsive documents.

Request No. 9: All documents reflecting studies, analyses, data, etc., used or relied on by Maricopa Ambulance, LLC in assessing the potential financial impact upon the American Medical Response of Maricopa, LLC. [sic] should the pending application be granted.

Objection: Maricopa Ambulance objects to this request as premature. Maricopa Ambulance has requested, through its proposed subpoenas duces tecum, the materials necessary to perform this type of analysis.

Without waiving these objections, Maricopa Ambulance is not currently aware of any responsive documents.

Request No. 10: All documents reflecting studies, analysis, data, etc., used or relied on by Maricopa Ambulance LLC in assessing the financial situation and resources of the American Medical Response of Maricopa, LLC.

Objection: See objection to request No. 9.

Request No. 11: All documents reflecting studies, analyses, data, etc., used or relied on by Maricopa Ambulance, LLC in computing and/or evaluating the response times of the American Medical Response of Maricopa, LLC.

Objection: See objection to request No. 9.

Request No. 12: All documents and evidence of the financial backing of Enhanced Equity Funds for Maricopa Ambulance, LLC as set forth in the pending application.

Objection: See objection to request No. 2. Maricopa Ambulance further objects to this request to the extent it overlaps with request No. 2.

Without waiving these objections, Maricopa Ambulance will produce documents that are responsive to this request, as reasonably interpreted.

Request No. 13: All service or performance complaints for the last 5 years from or to any regulatory body regarding sub-standard response performance or service performance for the following ambulance companies: Medcorp. Inc., Life Ambulance, First Med EMS, Priority Ambulance (all operational locations including but not limited to Tennessee); Shoals Ambulance (Alabama); Seals Ambulance (Indiana); Kunkel/Trans Am Ambulance (New York).

Objection: Maricopa Ambulance objects to the extent this request relates to Medcorp. Inc., Life Ambulance, and First Med EMS. Those companies have no connection with Maricopa Ambulance or its parent company, Priority Ambulance. Complaints relating to those companies are irrelevant. And even if they were relevant, neither Maricopa Ambulance nor its personnel possess any responsive documents.

Maricopa Ambulance further objects to the extent this request would require it to produce all complaints to any regulatory body. The request is not limited to complaints that were forwarded to the company that was the subject of the complaint, or of which the company was otherwise aware.

Maricopa Ambulance further requests to the timeframe of this request. Complaints regarding any ambulance company before it was acquired by Priority Ambulance (the parent company of Maricopa Ambulance) are not relevant, and requiring Maricopa Ambulance to produce them would be unduly burdensome. There is one exception here.

Although Maricopa Ambulance does not concede they are relevant, it is willing to produce responsive complaints regarding Shoals Ambulance during the time it was owned by Bryan Gibson (the current CEO of Maricopa Ambulance).

Finally, Maricopa Ambulance objects to the extent this request would require the production of documents relating to unsubstantiated complaints. As Rural Metro and AMR are no doubt aware, ambulance companies sometimes receive baseless complaints regarding their service—for example, complaints that standard rates are too high. Any probative value of unsubstantiated complaints is far outweighed by the burden of trying to locate, review, and produce them. Maricopa Ambulance is willing to produce any complaints to or from a regulatory body that were substantiated by that body, but not documents relating to all unsubstantiated complaints.

Without waiving these objections, Maricopa Ambulance intends to produce responsive documents, as limited by these objections.

Request No. 14: All documentation regarding matters relating to Bryan Gibson’s participation, management or oversight of the wind down, liquidation (pre and post-bankruptcy asset deployment) of FirstMed Corporation.

Objection: By way of background, Bryan Gibson is the CEO of Maricopa Ambulance. For a period of months in 2013, Mr. Gibson served as the CEO of FirstMed Corporation. At the time Mr. Gibson became CEO of FirstMed, the company was struggling financially. Mr. Gibson was hired in an attempt to reverse the company’s

downward spiral, but it was too late. FirstMed ended up filing for bankruptcy protection just four months later, in December of 2013.

Maricopa Ambulance first objects to this request on the ground of relevance. Mr. Gibson's brief participation in FirstMed has no bearing on the current CON application by Maricopa Ambulance, which is a completely separate corporate entity, with strong financial backing and the leadership of a team with many years of experience in the ambulance industry.

Maricopa Ambulance further objects to this request because it is overly broad and unduly burdensome. The request seeks "All documentation regarding matters relating to Bryan Gibson's participation, management or oversight of the wind down, liquidation (pre and post-bankruptcy asset deployment) of FirstMed Corporation." (Emphasis added.) Because FirstMed was already in a downward financial spiral when Mr. Gibson started working at the company, this request could encompass every email to or from Mr. Gibson during his time at FirstMed, as well as any other document from that company that includes Mr. Gibson's name. And the request does not suggest any logical way for Maricopa Ambulance to limit the scope of responsive documents. It is not limited to specific types of documents, a specific time frame (so it would, for example, include bankruptcy court filings extending from December 2013 to the present), specific key words, or even limited to documents that are not publicly available.

Maricopa Ambulance also objects because materials relating to the bankruptcy are publicly available, and are therefore as easily accessible to AMR as they are to Maricopa

Ambulance. All filings from the FirstMed bankruptcy case are publicly available through the federal court PACER website—as demonstrated by AMR’s request No. 15, which cites a specific order from the bankruptcy court matter. Additional materials regarding FirstMed’s financial troubles are also available publicly—as shown by the fact that AMR disclosed several in its initial exhibit list. *See, e.g.*, AMR’s exhibits 9, and 10A through 10Y.

In light of the wealth of information regarding the FirstMed bankruptcy that is publicly available through the bankruptcy case or other sources, it would be unreasonable and unduly burdensome to require Maricopa Ambulance or Mr. Gibson to try to locate, review, and produce other materials relating to that matter—particularly because the extremely broad scope of the request would make it difficult or impossible to determine which FirstMed-related documents are responsive to the request. Maricopa Ambulance requests that the Court quash this request in its entirety, to avoid a time-consuming, expensive, and unnecessary effort on a matter that is, fundamentally, not relevant to the issues in this matter.

Request No. 15: All documents produced by Bryan Gibson or his legal counsel pursuant to “Order Directing Production of Documents Under Rule 2004” directed to Bryan Gibson dated May 19, 2015 in Case 13-07673-8-SWH.

Objection: See objection to request No. 14. Without waiving this objection, Maricopa Ambulance is not currently aware of any responsive documents. As later entries on the bankruptcy court’s docket reflect, Mr. Gibson’s attorneys in the bankruptcy

case have objected to that court order. Maricopa Ambulance understands that, in that particular bankruptcy court, bankruptcy trustees obtain Rule 2004 orders *ex parte*; the parties that are subject to the order then have an opportunity to object. In the bankruptcy case, Mr. Gibson's attorneys are currently in discussions with the bankruptcy trustee about the scope of a potential production of documents. But at this point, Mr. Gibson's attorneys have not produced any documents in response to that order, so there is nothing for Maricopa Ambulance or Mr. Gibson to produce in response to request No. 15.

Respectfully submitted this 14th day of August, 2015.

COPPERSMITH BROCKELMAN PLC

By /s/ Scott Bennett
James J. Belanger
Kathy A. Steadman
Scott M. Bennett
Attorneys for Maricopa Ambulance, LLC

CERTIFICATE OF SERVICE

ORIGINAL filed using the OAH electronic document filing system
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By: /s/ Carol Keese