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10 Attorneys for American Medical Response of
11 Maricopa, LLC

12 **BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**

13
14 In the Matter of:

15 **Maricopa Ambulance, LLC**

16 Applicant.
17
18

) Docket No. 2015A-EMS-0190-DHS
(EMS No. 4004)

) **AMR MARICOPA'S PREHEARING
MEMORANDUM**

19 American Medical Response of Maricopa, LLC ("AMR Maricopa"), pursuant to
20 Case Management Order No. 8, hereby submits its Prehearing Memorandum in lieu of
21 an opening statement. AMR Maricopa understands and intends to support this Office's
22 role in making a record of those facts the Arizona Department of Health Services
23 ("ADHS") through its Director, will require in order to determine whether Maricopa
24 Ambulance's Application should be granted. For example, Maricopa Ambulance is
25 likely to contend it is similarly situated to AMR Maricopa when it went to hearing on its
26 CON application in September 2014. However, this is not the case. With regard to the
27 statutory prerequisites applicable to this proceeding, the recent management and
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1 financial history of Maricopa Ambulance’s principals, parent organization and the entity
2 providing its financial backing must be examined. Likewise, Maricopa Ambulance’s *pro*
3 *forma* financials show inconsistencies, and its parent’s audited and unaudited
4 financials for 2013 through the first half of 2015 are those of a financially unhealthy
5 company. This Memorandum will also address a couple evidentiary issues that may
6 arise during the course of the hearing.

7 **PREHEARING MEMORANDUM**

8
9 **A. AMR Maricopa’s Recent Entry Into The Maricopa County EMS System Has**
10 **Been A Positive Addition; Maricopa Ambulance cannot Legitimately**
11 **Contend Its Proposed Operation Is Situated The Same As AMR Maricopa’s**
12 **Was In September 2014.**

13 AMR Maricopa received its Certificate of Necessity (“CON”) on February 25,
14 2015. The CON allows it to provide both immediate response (911 calls) ambulance
15 transports and what are known as inter-facility and convalescent transports (which are
16 transports done between healthcare facilities, such as the transporting of an
17 emergency room patient to a different medical facility providing a higher level of care or
18 the movement of a hospital patient to a rehabilitation or other skilled nursing facility).
19 The CON service area covers all of Maricopa County with the exception of five fire
20 districts located toward the outlying areas of the county. At the time AMR Maricopa
21 applied for a CON, and continuing through issuance of its CON, this service area
22 overlapped just the City of Phoenix Fire Department’s CON, the Maricopa County
23 portions of seven different CONs held by Rural/Metro owned companies (some of
24 these CONs extend outside of Maricopa County), and a specific medical center
25 campus within one of the excluded fire districts (Sun City West). The service area is
26 essentially identical, except for the medical center campus, to the service area
27 Maricopa Ambulance has applied to serve.
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1 At the time of the hearing on AMR Maricopa's Application (September/October
2 2014), no other applications for CONs to cover any portion of Maricopa County were
3 known to be pending. Further, Rural/Metro had filed bankruptcy in August 2013. AMR
4 Maricopa's parent company, American Medical Response, Inc. ("AMR, Inc.") proposed
5 that its entry into the Maricopa EMS system, which entry would necessarily include the
6 financial and operational strengths and resources of its parent organizations, was in
7 the public's best interests. The AMR, Inc. (national) organization has the operational
8 and financial strength (and experience) to mobilize and provide the ambulance
9 transport resources that might become necessary for the Maricopa County population
10 in the event of an unexpected catastrophe or the failure of an existing provider.

11 AMR Maricopa also offered a unique public benefit for Maricopa County's
12 residents and healthcare providers: in addition to agreeing to be bound to 911
13 (emergency) transport response times (which is standard for all 911 service CONs), it
14 offered to be committed to certain inter-facility arrival times. The nature of inter-facility
15 transports has greatly changed over time. What once was routinely a transfer from a
16 skilled nursing facility/rehabilitation facility to a hospital (or vice versa) has developed
17 into a very important part of the Emergency Medical Services ("EMS") system. With
18 the growth of specialized hospitals, specialized equipment, and urgent care centers,
19 many inter-facility calls are now for patients who are stabilized, but require a higher
20 level of care, and require that care quickly. As such, AMR Maricopa is proud to be the
21 first Arizona CON holder with a CON that contains inter-facility arrival time
22 requirements.
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24 While the Applicant here is requesting an essentially identical service area as
25 that awarded to AMR Maricopa, and apparently intends to assert what it might call the
26 same or similar basis for its entry into the existing EMS system as that relied upon by
27 AMR Maricopa (the fact of the Rural/Metro bankruptcy and certain Rural/Metro entity
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1 service issues occurring prior to the bankruptcy), a number of factors will distinguish
2 the instant proceeding from that which occurred over a year ago.

3 First, the Applicant has not suggested a willingness to be bound to any inter-
4 facility transport arrival times. Its application continues the outdated approach of
5 treating these important transfers as the poor stepchild of the EMS system, unworthy of
6 any regulatory commitment.

7 Additionally, AMR Maricopa has successfully integrated itself into the Maricopa
8 County EMS system. As was expected at the time of the AMR Maricopa hearing, AMR
9 Maricopa's entry has primarily been through the inter-facility market. Maricopa
10 County's 911 ambulance transport needs are for the most part served by the outlying
11 fire districts, the City of Phoenix Fire Department (which does most of the 911
12 transports within the City of Phoenix), and then by contracts for 911 service the various
13 Rural/Metro entities hold with other Maricopa County municipalities. Until those
14 contracts expire, any 911 generated transports AMR Maricopa (or the Applicant) might
15 hope to do are primarily limited to the non-fire district county areas otherwise covered
16 by the Rural/Metro entities. AMR Maricopa is performing its inter-facility transports
17 within time frames better than those required by its CON and is otherwise an existing,
18 healthy ambulance transport service provider.¹

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20 Further, other entities have entered, or are in the process of applying to enter,
21 the Maricopa County CON market. For example, ABC Ambulance (a private entity)
22 now holds a CON allowing it to perform certain inter-facility transports. Daisy Mountain
23 Fire District has recently expanded its service area to specifically include a Maricopa
24 County healthcare facility (HonorHealth Sonoran Medical Facility), meaning the area of
25 the Daisy Mountain expansion is now covered by it, as well as AMR Maricopa and

26 ¹ While AMR, Inc.'s parent company, Envision Healthcare ("EVHC") announced on July 30, 2015 its entry into an
27 agreement to acquire Rural/Metro Corporation through AMR, Inc., that agreement is subject to certain
28 contingencies, including regulatory approval and customary closing conditions. For both AMR, Inc. (including its
subsidiaries) and Rural/Metro it is "business as usual" until such time, if ever, that all contingencies are satisfied.

1 Rural/Metro for both 911 and inter-facility transports. The cities of Sun City, Tempe,
2 and Buckeye all have CON applications pending with hearings set over the next six
3 months. Gilbert, Peoria and Queen Creek also have active CON applications. The
4 City of Mesa (with almost a half million residents) has received a CON allowing it to do
5 both 911 and inter-facility transports. The City of Surprise, through Surprise Fire and
6 Medical, also recently received a CON. The system is changing, and there will be
7 more and more opportunities for public/private partnerships, which AMR Maricopa
8 looks forward to as it believes these do help support a healthy EMS system.
9

10 **B. Information Regarding Maricopa Ambulance's Ownership, Financial**
11 **Backing and Management Team Should Be Made Part Of The Record Here**
12 **As This Information Is Important To Arizona's Statutory Requirements.**

13 This hearing is required because the Arizona Legislature has mandated a fully
14 regulated ambulance industry under the Arizona Department of Health Services. See,
15 Ariz.Const., Art. XXVII, §1 and A.R.S. §§36-2232 through 2246. Any person who
16 wants to operate an ambulance in this State must be granted a CON by ADHS. A.R.S.
17 §36-2233(A). In order to meet the CON requirements, an applicant must demonstrate
18 that it is fit and proper to operate an ambulance service [A.R.S. §36-2233(B)(3)] and
19 that public necessity requires the proposed service, or any part of it [A.R.S. §36-
20 2233(B)(2)]. "Fit and proper" relates to the Applicant's expertise, integrity, fiscal
21 competence, and resources to provide ambulance services to the requested service
22 area. A.R.S. §36-2201(21). "Public necessity" means an identified population needs
23 or requires all or part of the proposed ambulance transport services. AAC R9-25-
24 901(45).

25 Because the Applicant is a limited liability corporation, it makes sense that those
26 individuals at an ownership or managerial level are subject to scrutiny along with the
27 corporate entity when this statutorily mandated analysis is done by ADHS. Based
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1 upon its application, Maricopa Ambulance, LLC is a subsidiary of Priority Ambulance,
2 “a national ambulance service company with operations in New York, Tennessee and
3 Alabama”. See, OAH Document 47a, Combined Hearing Exhibits, hereafter “Exhibits,”
4 at DHS 01-004. The application also states that Priority Ambulance “has the clinical,
5 operational and financial knowledge and strength to assist Maricopa Ambulance, LLC,
6 with the provision of superior ground ambulance transport services in the proposed
7 service area”. Id.at DHS 01-004 and 005.

8 The application also reveals that Maricopa Ambulance, LLC is financially backed
9 by Enhanced Equity Funds (“Fund”). *Id.* at DHS 01-0005. The Fund, Applicant
10 asserts, will provide financial resources and expertise along with “extensive
11 management support”. *Id.* A principal of the Fund, Samarth Chandra, is listed as a
12 witness for the hearing. The application indicates that Maricopa Ambulance, LLC, has
13 assembled an executive leadership team which includes Bryan Gibson, Steve
14 Blackburn, Kristy Ponczak and Bob Jewell. *Id.* at DHS 01-008.

15 Scrutiny of the financial investor, Enhanced Equity, is therefore relevant.
16 Previously, Enhanced Equity had a partnership with Bryan Gibson to join FirstMed as
17 its Chief Executive Officer. See, *id.*, AMR-10C and 10D. These press releases from
18 July 2013 also reveal that Mr. Gibson founded Shoals Ambulance, Inc.

19 AMR Maricopa’s Exhibit 10W discusses Priority Ambulance as a new company
20 run by Bryan Gibson. The March 2014 article notes that “just three months ago, Gibson
21 was the CEO of FirstMed Ambulance Service headquartered in Wilmington, North
22 Carolina that operated under many different names in 70 municipalities in six states.”
23 The Chapter 7 bankruptcy filing in North Carolina under the name American Ambulette
24 and Ambulance Service, Inc., showed that the company had \$70 million dollars in debt
25 and shut down in December [2013] leaving many communities “scrambling” to find
26 medical transportation. “As such, Bertie County, North Carolina declared a state of
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1 emergency". Id, AMR -10W at 003. Additionally, not long before that bankruptcy, the
2 key members of Applicant's managerial staff were members of senior management at
3 Rural/Metro at the time it was heading into its August 2013 bankruptcy.

4 Mr. Gibson is the individual running the Applicant's business. On January 7,
5 2015 the North Carolina bankruptcy trustee filed an application for appointment of
6 special counsel with respect to claims against officers and directors. This inquiry
7 includes key participants in Maricopa Ambulance's proposed operation - Mr. Gibson,
8 Mr. Blackburn, Mr. Jewell, Mr. Chandra, and Enhanced Equity Funds - among others.
9 In May 2015 these individuals and the Fund were each personally ordered to produce
10 certain documents in the North Carolina bankruptcy. See e.g., *id.*, AMR-9. (Also the
11 administrative law judge can take judicial notice of the bankruptcy court docket – Case
12 No:13-07673-8-SWH – United States Bankruptcy Court for the Eastern District of North
13 Carolina). The orders served on these parties and counsel to produce documents
14 were specific and to date, no documents have been produced, thus frustrating the
15 efforts of special counsel appointed to investigate these individuals, the Fund and the
16 behavior leading to the bankruptcy filings.

17 AMR Maricopa has disclosed exhibits which demonstrate the heightened
18 scrutiny of the bankruptcy trustee regarding Mr. Gibson while he conducted the
19 business of American Ambulette and Ambulance Service, Inc. The bankruptcy trustee
20 applied to the Court for the appointment of professionals to investigate the financial
21 affairs and substantiate claims against insiders and third parties arising from breaches
22 of duties. The trustee is investigating "intentional, reckless or negligent actions that
23 caused injury to debtors and the creditors of the debtors' bankruptcy estates". See,
24 Exhibits, AMR- 12 -001. The bankruptcy judge recently ordered the appointment of
25 these professionals and the order specifically notes that the trustee believes that the
26 estates of the debtors "may have substantial claims against insiders and third parties
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1 arising from breaches of duties to the debtors, transfers of the debtors' funds and
2 assets, and other intentional, reckless or negligent actions that caused injury to the
3 debtors and the creditors of the bankruptcy estates." *Id.*, AMR-13-002. The Court's
4 order notes that Bryan Gibson and Steve Blackburn objected to the trustee's
5 application, presumably because their acts or omissions will be subject to scrutiny by
6 the retained professionals. *Id.*, AMR-13-001. The court docket demonstrates that all of
7 the individuals and the Fund have objected, as well.

8 Ms. Ponczak is the former Chief Financial Officer and Treasurer of Rural/Metro.
9 She held these positions from October 2006 until November, 2011. *See, Id.*, DHS-01-
10 0144. She holds a similar position for the Applicant. In August 2013 her former
11 employer, Rural/Metro, filed for bankruptcy protection. That bankruptcy was based, in
12 part, upon what Rural/Metro called "significant accounting challenges" and upon the
13 company's admitted great difficulty appropriately accounting for revenue.

14 AMR Maricopa's exhibits document that in Ohio, FirstMed (the parent company
15 of Life Ambulance and MedCorp), while under Mr. Gibson's management, abruptly
16 closed its doors in December 2013, not only putting hundreds of employees out of
17 work, but also ceasing to provide ambulance service to the community. *Id.*, AMR-10E.

18 During the same time period, FirstMed EMS also closed its operations, without
19 warning, in Virginia. *Id.*, AMR-10J and 10K. The bankruptcy filing for FirstMed EMS
20 included Life Ambulance Service and FirstMed EMS, which served more than 70
21 municipalities in Kentucky, North Carolina, Ohio, South Carolina, Virginia and West
22 Virginia. *Id.*, AMR - 10S and- 10T. The evidence will demonstrate that employees in
23 these states were laid off immediately, without any notice. For instance, the layoff in
24 Ohio affected 509 employees. Ohio law requires a company to give a 60 day notice
25 prior to layoffs. Of interest is the quote from Chief Financial Officer Shawn Heming,
26 who acknowledged the 60 day notice law but stated the company failed to comply, ...
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1 “because of unforeseen business circumstances relating to our lenders’ recent decision
2 not to extend further funding to continue operations and sending notices earlier [to
3 employees] would have jeopardized our effort to obtain further funding.”

4 Additionally, it must be noted that just two and a half years before these
5 December 2013 events, in June 2011, MedCorp filed for Chapter 11 Federal
6 Bankruptcy shortly after being acquired by FirstMed EMS. See *Id.*, AMR-10F- 10G
7 and- 10H.

8 On December 16, 2013, certain former employees who were improperly laid off
9 filed an action alleging violations of the federal WARN Act (Worker Adjustment and
10 Retraining Notification Act – 29U.S.C. Sec. 2101, et. seq.) and various state wage
11 payment laws relating to the circumstances surrounding the abrupt closing of the
12 FirstMed operations. The “WARN” litigation is currently pending as an adversary
13 proceeding in the North Carolina bankruptcy court (Case No. 13-00215-8-SWH). The
14 plaintiffs are seeking class certification for approximately 2,000 ambulance employees
15 over several states (North Carolina, Ohio, Virginia, West Virginia, South Carolina,
16 Kentucky) who failed to receive the statutory notification and who have not received
17 their wages due and owing for work done for the ambulance companies at issue. In
18 that complaint, several allegations are made regarding Samarth Chandra (the Fund
19 point person who took an active role in managing the entities, visiting their sites and
20 supervising the executives it hired to run them) and Bryan Gibson (approximately 90
21 days before shutdown FirstMed began transferring a significant number of its
22 ambulances and related equipment from its Ohio operations to Alabama, where Bryan
23 Gibson owns Shoals Ambulance, Inc., and to Tennessee, where Gibson had run
24 Priority EMS, Inc.).

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26 In its answer to the WARN complaint, the Chapter 7 Trustee, on behalf of the
27 bankrupt estates admitted that: (1) The Fund exercised a great amount of control over
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1 the debtor ambulance companies; (2) the Fund officers, including Samarth Chandra,
2 directed the FirstMed Debtors to shut down and file for Chapter 7 protection and that a
3 60 day notice was not provided to the employees; (3) equipment and ambulances were
4 transferred from FirstMed to the Alabama and Tennessee operations owned by or
5 affiliated with Mr. Gibson; and (4) the Fund withdrew investment of additional capital
6 that was essential to the ongoing operations of the ambulance company debtors.
7 Despite a mediation this past summer, the adversary action is still proceeding and
8 discovery is ongoing.

9 The Fund serves as Maricopa Ambulance's source of financial support, yet
10 previously backed out of providing essential capital to corporate entities run by Mr.
11 Gibson and his team. There is absolutely no dispute several communities were left
12 without ambulance service by Mr. Gibson's team. Employees were locked out without
13 notice and were not paid for work done. Benefits were lost. Bankruptcy and WARN
14 litigation and bankruptcy trustee investigations relating to not only Mr. Gibson, but other
15 members of Maricopa Ambulance's management team, continue to this date. These
16 matters involve very serious allegations of financial and regulatory wrongdoings.
17 Additionally, Mr. Gibson was at the leadership helm of Rural Metro during the downturn
18 into its bankruptcy and led the FirstMed entities to the same fate.
19

20 **C. Maricopa Ambulance's Financial Projections And The Financial Health Of**
21 **Its Parent, Priority Ambulance, Must Also Be Considered.**

22 In addition to the recent management, operations and financial history of the
23 Applicant's management team and owner, the immediate financial competence of the
24 Applicant is something the Director must consider. To that end, it will be noted that
25 Maricopa Ambulance's *pro forma* (first year of operations) financials, as seen in its
26 ARCR, have a significant flaw – its balance sheet and cash flow statement do not
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1 appear to correlate to its income statement. Furthermore, the financial package
2 provided by Applicant, including its financial expert's report, appears to simply be a
3 compilation of projections asserting that its management team can accurately predict
4 future cash flows available from healthcare billing and collections of four different newly
5 acquired ambulance service operations. The risks of timely payer enrollment, systems
6 integration and payer behavior coupled with the inherent optimism in Priority
7 Ambulance's projections (see, Exhibits, ADHS-18 at Section 5 – Findings – line 1)
8 raise questions that Applicant should be required to resolve. It also must be observed
9 that the Applicant's parent company, Priority Ambulance, has exhibited recent
10 unhealthy financial performance. In 2013, it posted net losses (unaudited) of
11 \$420,398. See, Exhibit AMR 47-005. In 2014, those net losses grew (audited) to
12 \$8,418,629. *Id.* Its first half of 2015 (unaudited) financials show an actual net loss of
13 \$2,165,596. *Id.*, AMR 46-001.

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17 **D. Evidentiary Issues That May Arise.**

18 Certain evidentiary issues that may arise during the course of the hearing merit
19 some comment here. Because of the nature of the Applicant's witness and exhibit
20 disclosures/filings, to a great extent AMR Maricopa does not know much more about
21 many of the Applicant's witnesses' expected testimonies than the subject matter of
22 their expected testimonies. Despite numerous requests from AMR Maricopa, that
23 subject matter of testimony description (as opposed to a fair description of expected
24 testimony) continues to hamper AMR Maricopa's preparation. For example, a number
25 of individuals are listed as intended expert witnesses, yet no expert witness reports or
26 written statements have been provided for them, and the Applicant's response to the
27 Subpoena Duces Tecum (issued at AMR Maricopa's request) item that required
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1 disclosure of complete expert witness files yielded not much more than emails between
2 counsel and the experts regarding contractual arrangements and the setting of phone
3 calls, expert witness contracts, and communications relating to the expert's assistance
4 in putting together the Applicant's Subpoena Duces Tecum requests (to Intervenors
5 and third parties). As such, should expert witnesses provide great detail about that
6 which should have been fairly summarized, this Office can expect AMR Maricopa to
7 object or request some accommodation, perhaps even including a delay in the
8 proceedings to address the same with its own witnesses or third parties that might
9 have been retained had the expert's expected testimony been fairly summarized in a
10 timely fashion.

11 Further, the brevity of expected witness testimony is in sharp contrast to the
12 Applicant's exhibit filings, which are in such abundance that presentation of Applicant's
13 case in the four to five days it originally suggested appears essentially impossible.
14 Maricopa Ambulance has numbered 163 exhibits, to date. However, these exhibits
15 contain over 320 subparts, meaning that its filed exhibits exceed 480.

16 From these, it appears that the Applicant intends to delve into areas not relevant
17 or extremely collateral (at best) to these proceedings. For example, at its exhibit topic
18 No. 70 (70a-70t), the Applicant lists "Press Releases, News Articles and other public
19 information re AMR . . ." None of these other than 70t are about AMR Maricopa. All,
20 except 70t, predate ADHS's issuance of a CON to AMR Maricopa. For the most part,
21 these relate to other entities that are wholly owned subsidiaries of AMR, Inc. None,
22 other than 70c and 70t, have anything to do with Arizona. 70c relates to an entity
23 currently owned by AMR, Inc. (River Medical) but involves an incident occurring prior to
24 that ownership. Some date back to the 1990s.

25
26 As of 2014, AMR, Inc. was doing over 3 million transports a year in 40 states
27 and the District of Columbia, serving over 2,000 communities, ranging in size from
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1 major metropolitan to very rural. Given the volume of business done, and the fact that
2 the nature of ambulance transportation means that individuals working within the AMR,
3 Inc. family are often responding to urgent, dangerous, rapidly changing situations, it is
4 not surprising that occasionally (like others in the ambulance industry) some of AMR,
5 Inc.'s subsidiaries have found themselves sued and have settled cases. Given the
6 constantly changing Medicare/Medicaid billing requirements, it is also not surprising
7 that some of these entities may have come under federal scrutiny for
8 Medicaid/Medicare billing inquiries, and may have elected to resolve those matters
9 rather than incur the uncertainty and expense of litigation.

10 Settlements, whether occurring as a result of lawsuits or regulatory
11 investigations, do not equate to wrongful conduct. Settlements can be made for purely
12 business reasons, such as the expense associated with litigating the matter to
13 conclusion, or the desire to assume responsibility for honest mistakes without suffering
14 the full extent of "wrongdoer" penalties. Likewise, "bad acts" by random (non-core
15 management) employees in other AMR organizations, without companion evidence of
16 some sort of a persistent pattern or institutional neglect by AMR, Inc., can have no
17 relevance to the issues this Office is presented with, especially to the extent these
18 predate the Director's recent determination that AMR Maricopa, through its parent
19 organizations, is indeed "fit and proper" to provide ambulance transport services in
20 Arizona. Instead, they could only be intended to accomplish irrelevant "mudslinging,"
21 which would then require AMR Maricopa to call rebuttal witnesses. As such, should
22 Applicant decide to proceed down the path of introducing this list of articles relating to
23 litigation settlements, etc., AMR Maricopa will be objecting that the submissions are so
24 far removed from anything relevant to the hearing, that the presentation should not be
25 allowed.
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1 Similarly, the Applicant has listed as intended exhibits 13 items from the AMR
2 Maricopa CON application proceeding, including transcripts of hearing testimonies
3 occurring in September and October 2014, counsel's closing brief and counsel's
4 proposed Findings of Fact and Conclusions of Law, and the Administrative Law
5 Judge's 75 page Decision. While AMR Maricopa has no concerns regarding the
6 accuracy of these items, given changes to many of the underlying facts that AMR
7 Maricopa proceeded upon during the course of that hearing (considering both the
8 passage of time and the entry into the existing EMS system of AMR Maricopa and
9 other entities, as mentioned above), any attempts to introduce these items, in bits and
10 pieces, will likely require significant time to be spent on establishing the context for the
11 same (the entire factual basis for AMR Maricopa's presentations then, and what has
12 occurred since). To put all of this into evidence (a re-discussion of the AMR Maricopa
13 hearing), in and of itself could take days of testimony. The time necessary to address
14 the same would be entirely out of proportion with, and not justified by, the issues that
15 are to be considered during the course of the instant hearing.

16 Another issue that may arise relates to the Applicant's proposed rates and
17 charges, and the related finances. There has been a suggestion that Maricopa
18 Ambulance has submitted an amended Ambulance Revenue and Cost Report
19 ("ARCR") that is based upon rates and charges different than those included with its
20 application package and identified in the Notice of Hearing. The proposed rates and
21 charges, as well as the Applicant's *pro forma* first year financials, as set out in its
22 ARCR, are essential parts of the CON application package. If the Applicant has
23 submitted an amended ARCR with new proposed rates and charges to ADHS
24 subsequent to its September 17, 2015 written statement of intent to do this (see,
25 Exhibit MA-127), any discussions relating to rates, financial considerations, etc. that
26 the Applicant intends to base upon this yet unseen amended ARCR and newly
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1 proposed rates and charges will be objected to by AMR Maricopa. The proposed rates
2 and charges are an important part of the Notice of Hearing, which as a matter of law
3 must go out to interested parties at least fifteen days before the hearing occurs. See,
4 A.R.S. §36-2234, including subsection (B)2 and 3. Further, any attempts by Applicant
5 to manipulate its financial calculations, so close in time to the hearing, deprives the
6 other parties with fair notice of such calculations, and the ability to analyze and address
7 the same in their presentations.

8 The Notice of Hearing for this matter (OAH Document 2) defines the issues to
9 be heard. These track the statutory requirements summarized above. In summary,
10 these issues are whether public necessity requires the proposed service (or any part of
11 it), whether the Applicant is fit and proper to provide the services proposed, whether
12 the proposed service area is in the best interests of the public, whether Applicant's
13 proposed rates and charges (as identified in the Notice) are appropriate, whether the
14 type and level of service proposed by the Applicant and its proposed response times
15 are in the best interests of the public, and whether the Applicant has provided certain
16 information required by the governing regulations and is willing to meet certain clinical
17 standards.

18 In order to assist with a determination as to the governing statutory
19 requirements, ADHS, through its Director, has adopted regulations, found at AAC R9-
20 25-901, *et seq.* These regulations may become important during the hearing. For
21 example, none include as a consideration for a CON hearing whether existing CON
22 holders (who have already been found to be fit and proper by ADHS) continue to be "fit
23 and proper." That would involve hearings within hearings. There is a separate
24 regulatory process in place to address issues or complaints relating to an existing CON
25 holder or the ambulance transport services it provides. See, A.R.S. §36-2245.
26 Additionally, AMR Maricopa is confident that since it has commenced operations, there
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1 has been no reason to question its expertise, integrity, fiscal competence or resources.
2 On the other hand, whether or not Maricopa Ambulance, which at this point is nothing
3 more than a shell company dependent upon its parent organization (Priority
4 Ambulance) and its principals/management team, is fit and proper is a critical issue for
5 the Director's determination.

6 AMR Maricopa appreciates the opportunity to participate in this CON
7 proceeding.

8 DATED THIS 28th day of September, 2015.

9
10 **FLETCHER STRUSE FICKBOHM & MARVEL PLC**

11 /s/ RONNA L. FICKBOHM

12 Ronna L. Fickbohm
13 Attorneys for American Medical Response of
14 Maricopa, LLC

15 **SHORALL MCGOLDRICK BRINKMANN**

16
17 /s/ PAUL MCGOLDRICK

18 Paul McGoldrick
19 Attorneys for American Medical Response of
20 Maricopa, LLC

21
22 Pursuant to Case Management
23 Order No. 1, electronic filing and
24 service of the foregoing Prehearing
25 Memorandum through
26 <https://portal.azoah.com/oedf/>,
27 has been done this 28th day of September, 2015.

28 By: /s/ Linda Clark