

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In the Matter of:

No. 2015A-EMS-0190-DHS

4 Maricopa Ambulance, LLC

**ADMINISTRATIVE
LAW JUDGE DECISION**

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7 **HEARING DATES:** October 5, 2015; October 6, 2015; October 7, 2015;
8 October 9, 2015; October 19, 2015; October 20, 2015; October 21, 2015; October 22,
9 2015; October 23, 2015; October 26, 2015; October 29, 2015; January 13, 2016; and
10 January 14, 2016; the record was held open until March 28, 2016, to allow the parties'
11 attorneys to submit post-hearing memoranda.

12 **APPEARANCES:** Applicant Maricopa Ambulance, LLC ("Maricopa Ambulance")
13 was represented by James J. Belanger, Esq., Kathy A. Steadman, Esq., and Scott M.
14 Bennett, Esq., Coppersmith Brockelman PLC;

15 Intervenor American Medical Response of Maricopa, LLC ("AMR") was
16 represented by Ronna L. Fickbohm, Esq., Fletcher Struse Fickbohm & Marvel PLC, and
17 Paul J. McGoldrick, Esq., Shorall McGoldrick Brinkmann;

18 Intervenor Rural/Metro Corporation (Maricopa) dba Rural/Metro Ambulance
19 Service dba Arizona Medical Transport dba AMT, Professional Medical Transport Inc.
20 dba PMT Ambulance, ComTrans Ambulance Service, Inc. dba ComTrans Ambulance
21 dba ProMed Transport dba American ComTrans, and SW General, Inc., dba Southwest
22 Ambulance, Emergency Medical Transport, Inc., dba American Ambulance, Southwest
23 Ambulance of Casa Grande, Inc. dba Southwest Ambulance and Rescue of Arizona
24 (collectively "Rural/Metro") were represented by Lawrence J. Rosenfeld, Esq., and
25 Laura Lawless Robertson, Esq. (on the post-hearing memorandum), Squire Patton
26 Boggs (US) LLP;

27 Intervenor ABC Ambulance LLC ("ABC") was represented by Adriane J.
28 Hofmeyr, Esq., and John F. Munger, Esq. (on the post-hearing memorandum), Munger
29 Chadwick PLC;
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1 The Arizona Department of Health Services, Bureau of Emergency Medical
2 Services and Trauma System (“ADHS/BEMSTS” or “the Bureau”) was represented by
3 Kevin D. Ray, Esq., Laura Teresa Flores, Esq., and Patricia Cracchiolo LaMagna, Esq.,
4 Assistant Attorneys General.

5 **ADMINISTRATIVE LAW JUDGE:** Diane Mihalsky

6
7 **INTRODUCTION**

8 Maricopa Ambulance filed with the Bureau an application for a certificate of
9 necessity (“CON”) to provide immediate response (“911” or “emergency”), interfacility
10 transport (“IFT”), and convalescent ambulance services. An evidentiary hearing was held
11 in which AMR, Rural/Metro, and ABC were given permission to intervene. Maricopa
12 Ambulance has demonstrated that a CON should be granted, principally, for the following
13 reasons:

- 14 • Maricopa Ambulance has established that there is a public necessity for its
15 proposed services; and
- 16 • Maricopa Ambulance has established that it is fit and proper to provide the services
17 proposed.

18 **FINDINGS OF FACT**

19 **BACKGROUND**

20 **Maricopa Ambulance’s Proposed Service Area and the Intervening CON Holders**

21 1. Maricopa Ambulance filed an application with the Bureau to provide ground
22 ambulance service in Maricopa County on November 7, 2014 (“the Application”).

23 2. Maricopa County is the largest county in Arizona in terms of population, with
24 more than 4 million residents, and contains more than 9,000 square miles that include
25 numerous municipalities. Maricopa County contains thousands of public and private
26 health care facilities located throughout the county.

27 3. Maricopa Ambulance’s proposed service area overlaps with the service
28 areas of Rural/Metro (CONs 109, 71, 46, 86, 75, and 66), AMR (CON 136), and ABC
29 (CON 139). Maricopa Ambulance and the intervening CON holders are all privately
30 owned, for-profit entities.

1 4. The only significant difference between Maricopa Ambulance's and AMR's
2 service areas is that AMR's service area includes the campus of Banner Del E. Webb
3 Medical Center in Sun City West, while Maricopa Ambulance's proposed service area
4 does not.

5 5. Maricopa Ambulance's proposed service area also overlaps with the service
6 areas of CONs that the Bureau granted to certain public entities after the hearing on
7 AMR's application for a CON in Case No. 2014A-EMS-0305-DHS and Maricopa
8 Ambulance's subsequent filing of the Application. These public entites include
9 Superstition Fire & Medical District (CON 137), Mesa Fire & Medical Department (CON
10 140) ("Mesa"), Surprise Fire-Medical Department (CON 141), and Daisy Mountain Fire
11 Department (CON 105) ("Daisy Mountain"). On February 18, 2016, after the last day of
12 hearing in this matter, the Bureau granted CON 144 to the Town of Queen Creek. The
13 service areas of the public entities generally correspond to their municipal boundaries.

14 6. The City of Phoenix Fire Department ("Phoenix") also holds CON 76 that was
15 originally was issued before AMR, ABC, or the other public entities obtained their
16 CONs for a large portion of Maricopa Ambulance's proposed service area, consisting
17 the municipal boundaries of the City of Phoenix.

18 7. The CONs issued to Daisy Mountain and Mesa allow emergency and IFTs.
19 The other CONs issued to public entities, including the City of Phoenix, allow only 911
20 in the CON holders' service areas. Historically, Phoenix has provided most of the 911
21 transports in its service area.

22 8. Areas in Maricopa County that do not presently have a CON held by a public
23 entity include the municipalities of Avondale, Cave Creek, Chandler, Glendale,
24 Goodyear, Paradise Valley, and Scottsdale, and rural sections of Maricopa County.
25 These areas mostly depend on private providers of ambulance service for 911
26 transports, IFTs, and convalescent transports.

27 9. Although the Bureau informed all CON holders that Maricopa Ambulance had
28 filed the Application, no public CON holder requested to intervene in this matter.

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Rural/Metro

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2 10. Rural/Metro is an ambulance provider that started providing services in
3 Maricopa County but over time, expanded to 25-30 other states. Rural/Metro is one of
4 two private ambulance service companies that had a national presence until October
5 2015, when its parent company was acquired by AMR's parent company.

6 11. From 2005 until 2012, there were than one private provider of ambulance
7 service in Maricopa County. By 2012, Rural/Metro had acquired the CONs of all other
8 private ambulance service providers in Maricopa County. Between 2012 and 2015,
9 Rural/Metro was the only private ambulance service provider in Maricopa County.

10 12. In 2013, Rural/Metro's parent company filed for protection under Chapter
11 11 of the United States Bankruptcy Code. Before and after the bankruptcy filing, many
12 hospitals, long-term care facilities, and other users of ambulance services reported that
13 Rural/Metro's level of service in Maricopa County had declined. The Bureau also
14 expressed concerns about what would happen in the Arizona markets where
15 Rural/Metro was the primary private ambulance service provider if Rural/Metro's
16 financial troubles rendered it unable to continue providing ambulance service or
17 continued to affect the level of service that it was able to provide.

18 13. In the year ending on September 2014, there were over 300,000 calls for
19 ambulance service in Maricopa County. Rural/Metro handled more than 200,000 of the
20 calls. As of the dates of the hearing, Rural/Metro still provided the vast majority of
21 private ambulance transports in Maricopa County.

AMR

22
23 14. AMR's parent company is another private ambulance company with a
24 national presence, with operations in approximately 40 states. Shortly after
25 Rural/Metro filed bankruptcy, AMR applied for a CON to provide ambulance service in
26 Maricopa County. At that time, AMR's parent company's only presence in the Arizona
27 market was its subsidiary, River Medical, an ambulance provider in Mohave and La Paz
28 Counties, and Life Line Ambulance, the service area of which is mostly in Yavapai
29 County, but includes a small part of northern Maricopa County.

1 15. In February 2015, after the hearing in Case No. 2014A-EMS-0305-DHS,
2 the Bureau granted AMR CON 136 for emergency transports, IFTs, and convalescent
3 transports in Maricopa County. In January 2016, AMR averaged 150 transports per
4 day, which works out to 54,750 transports per year.

5 16. On October 28, 2015, AMR's parent corporation acquired Rural/Metro's
6 parent corporation.

7 17. On January 26, 2016, the Director of ADHS issued a decision in Case No.
8 2016A-EMS-0145-DHS approving the transfer of Rural/Metro's CONs to AMR. The
9 Director recognized that the transfer "will result in a majority of the ground ambulance
10 services in Arizona being operated by AMR" The Director's decision required
11 AMR to include certain provisions in its contracts with political subdivisions and to
12 provide information to ADHS twice each year on response and arrival times and
13 company finances.

14 18. Since AMR acquired Rural/Metro's CONs, AMR and/or Rural/Metro
15 entities provide approximately 75% of the ambulance transports in the Central Region
16 of Arizona, which includes Maricopa County.

17 **ABC**

18 19. In mid-2015, ABC received CON 139 to provide medical transports in
19 Maricopa County. The CON limits the number of ambulances that ABC may run to 10
20 ambulances in year one and up to 20 ambulances through year five, and an additional
21 two ambulances per year after that. The CON only authorizes ABC only to provide
22 IFTs and convalescent transports.

23 **MARICOPA AMBULANCE'S APPLICATION AND AMENDMENTS AT THE HEARING**

24 20. During the Bureau's administrative review of Maricopa Ambulance's
25 Application, the Bureau determined administrative completeness under A.A.C. R9-25-
26 902. If anything was missing from the application, the Bureau notified Maricopa
27 Ambulance, which was required to respond to the requests for information if it wanted
28 the application to proceed. Maricopa Ambulance provided all the information that the
29 Bureau requested. During the Bureau's substantive review, Maricopa Ambulance also
30 answered all the Bureau's questions.

1 21. Maricopa Ambulance's application provided the following response times:

- 2 I. For any of the Cities within Maricopa County where
3 Maricopa Ambulance has a filed suboperation station
4 with ADHS-BEMSTS, the following fractal response
5 times will apply:
6
7 a. Ten (10) minutes on ninety (90) percent of all
8 emergency transports.
9
10 b. Fifteen (15) minutes on ninety-five (95) percent of all
11 emergency transports.
12
13 c. Twenty (20) minutes on one hundred (100) percent of
14 all emergency transports.
15
16 II. Otherwise
17
18 a. Ten (10) minutes on eighty (80) percent of all
19 emergency transports.
20
21 b. Fifteen (15) minutes on ninety (90) percent of all
22 emergency transports.
23
24 c. Twenty (20) minutes on one hundred (100) percent
25 off all emergency transports.¹

18 22. Maricopa Ambulance has a base hospital agreement with Maricopa Medical
19 Center. Bruce Horwood, MD, would be Maricopa Ambulance's Medical Director. Dr.
20 Horwood is an emergency room physician at Maricopa Medical Center who has
21 practiced medicine for 22 years and has acted as the medical director for other
22 ambulance services. Dr. Horwood testified that other physicians would be involved in
23 Maricopa Ambulance's operations.

24 23. Maricopa Ambulance is wholly owned by Priority Ambulance, LLC
25 ("Priority"), which in turn owned and financially backed by Enhanced Equity Funds
26 ("EEF").

27 24. Priority's management team for all of its subsidiaries is Steven Blackburn,
28 Chief Operating Officer, Kristi Ponczak, CPA, Chief Financial Officer, Bryan Gibson,
29

30

¹ ADHS Exhibit 1 at 81.

1 Chief Executive Officer, and Bob Jewell, Vice President of Revenue Cycle
2 Management. Mr. Blackburn, Ms. Ponczak, Mr. Gibson, and Mr. Jewell all have
3 extensive experience in the provision of medical services, including at Rural/Metro
4 before it filed for bankruptcy. Dennis Rowe also will be on-site to assist with Maricopa
5 Ambulance's start-up operations. Mr. Rowe is a certified paramedic with experience in
6 ambulance operations and a board member of the National Association of Emergency
7 Technicians.

8 25. Maricopa Ambulance did not list any suboperation stations locations on its
9 application. Instead, it stated that it would post and dispatch its ambulances from
10 NextCare Urgent Care ("NextCare"). NextCare is also owned by EEF.

11 26. Maricopa Ambulance did not include in its Ambulance Revenue and Cost
12 Report ("ARCR") the cost of locating any suboperation stations. The application did list
13 Maricopa Ambulance's address as its office in Scottsdale. When the Bureau's attorney
14 read the statutory definition of a suboperation station to Mr. Gibson, he agreed that
15 Maricopa Ambulance's office in Scottsdale would qualify as a suboperation station and
16 that the faster tier of response times would apply to Maricopa Ambulance's responses
17 in Scottsdale.

18 27. NextCare is the largest urgent care center in Maricopa County with
19 eighteen current locations. Maricopa Ambulance analyzed the driving time from
20 NextCare locations to all of the hospitals in Maricopa County and calculated that
21 Maricopa Ambulance's crews could reach every hospital in the county within fifteen
22 minutes. After Maricopa Ambulance obtains information regarding call volume from
23 specific locations, its witnesses stated that it will determine the locations of additional
24 dedicated permanent suboperation stations.

25 28. The ARCR in Maricopa Ambulance's initial Application contained some
26 errors because it was based on Priority's actual balance sheet at the time, not on
27 Maricopa Ambulance's projected balance sheet in the event that it was granted a CON
28 that allowed it to begin operations. Maricopa Ambulance submitted an amended ARCR
29 during the hearing that included its projected revenues and expenses.

1 29. At both the hearings on Maricopa Ambulance’s Application in this matter
2 and on AMR’s application in Case No. 2014A-EMS-0305-DHS, witnesses discussed
3 the difficulty of allocating debt and assets to a subsidiary of a parent company that
4 owns numerous individual ambulance companies located in various local markets.
5 Witnesses also testified that national companies are able to provide financial and
6 technological advantages through centralized management and financing.² However,
7 the Bureau’s ARCR forms require information only from the local ambulance company
8 that has filed the application or that has been issued a CON.

9 30. When Maricopa Ambulance submitted its Application, it intended to be part
10 of a uniform rate group, but the Bureau did not process the application to make
11 Maricopa Ambulance part of the uniform rate group. Todd Jaramillo, the Chief of the
12 Bureau’s Ambulance Certification and Enforcement Section, requested that Maricopa
13 Ambulance send a letter confirming its intention to be part of the uniform rate group and
14 to submit an amended ARCR that reflected the slightly higher uniform rates. Maricopa
15 Ambulance submitted an amended ARCR showing uniform rates during the hearing.

16 31. Rural/Metro, AMR, and ABC all belong to the uniform rate group for
17 Maricopa County.

18 32. Maricopa Ambulance projected that it would make 24,519 transports during
19 its first year of operation.

20 33. According to Maricopa Ambulance’s analysis, the initial rates would lead to
21 a projected first-year net income of more than \$1.1 million. After the Bureau reviewed
22 the application, it estimated first-year income of only \$1,542.00. Maricopa Ambulance
23 accepted this revision.

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30 ² See, e.g., Recommended Decision in 2014A-EMS-0305-DHS (Exhibit MA-71) at 20, Finding of Fact 28(S).

**WHETHER PUBLIC NECESSITY REQUIRES THAT THE BUREAU ISSUE
A CON TO MARICOPA AMBULANCE**

Response Times

34. The emergency response times that Maricopa Ambulance proposed in its application are generally equal to or faster than the response times on AMR's and Rural/Metro's CONs.

35. Although the percentages for proposed emergency response times are the same or similar on Maricopa Ambulance's Application and on Rural/Metro's CONs, Rural/Metro holds its CONs under an older regulatory regime under which the required percentage is just for transports, not all calls for service. Including cancellations and other circumstances that prevent a call for service from resulting in a transport increases overall response times.

36. The Bureau currently requires CON applicants to measure response times for all calls for service, not just transports, to be more consistent with the terms of the applicable regulation. Holders of older CONs still measure response times for transports only because that is what their CONs allow. As older CONs are amended, the Bureau will bring them into conformity with current practice.

37. The eighteen NextCare locations do not contain sleeping quarters or cafeterias where Maricopa Ambulance's crews can await calls for service. Maricopa Ambulance's witnesses testified, however, that they anticipated that NextCare would provide a source for Maricopa Ambulance's IFTs.

38. Because Maricopa Ambulance does not presently have any contracts for 911 ambulance service, it anticipates that most of its transports during its first year will be IFTs or convalescent transports and that most of the emergency transports that it will make will be through mutual aid agreements with other providers.

39. AMR's CON includes required response times for IFTs. If AMR does not have available units for a non-urgent call, it may negotiate a later response time. AMR's compliance with its response times for IFTs is over 90% overall, including the negotiated response times.

1 40. Although Maricopa Ambulance offered to commit to response times for IFTs
2 if the Bureau requested, its application did not include such response times. Health
3 care facilities also frequently require response times for IFTs by request contract.

4 **The Existence of Ground Ambulance Service to All or Part of Maricopa**
5 **Ambulance's Service Area**

6 41. As noted above, Maricopa Ambulance's proposed service area is covered
7 by other CON holders, including the intervenors and six public fire departments. At the
8 AMR hearing, Rural/Metro and the City of Phoenix held the only other CONs in the
9 area for 911 transports and Rural/Metro held the only CON for IFTs and convalescent
10 transports. Witnesses testified to the benefits of another provider who could handle
11 overflow when the contracted ambulance provider could not respond to a call quickly
12 enough or who would be available to take calls in the event an existing CON holder
13 went out of business.

14 42. Mr. Blackburn testified that based on his discussions, many of the fire
15 departments recently obtained CONs to augment their system during periods of a high
16 volume of calls for service or to protect themselves in the event that the private provider
17 goes out of business. Mr. Blackburn acknowledged that the City of Phoenix historically
18 has provided superb 911 service to its service area in Maricopa County, without the
19 benefit of significant augmentation from private providers.

20 43. As noted above, since the AMR hearing, six public entities have obtained
21 CONs for emergency transports and two of those public entities also can perform IFTs.
22 ABC can perform IFTs and convalescent transports, but acknowledged that the
23 limitation on the number of ambulances that it can place in the field prevents it from
24 serving most of Maricopa County. AMR is the only provider of emergency services in
25 areas where no public entity has obtained a CON and the main provider of IFTs and
26 convalescent transports in areas where either no public entity has obtained a CON or
27 the public entity's CON does not include IFTs or convalescent transports.

28 44. AMR's service area and Maricopa Ambulance's proposed service area
29 include an outlying area of the county where Canyon Lake and Apache Lake are
30 located. Because the area is so remote and generates relatively few calls for service,

1 AMR cannot post an ambulance at that location all the time. Maricopa Ambulance's
2 witnesses testified that if it were granted a CON, it would work with AMR to develop a
3 plan for coverage of this and other remote areas of Maricopa County.

4 **The Financial Impact on Other CON Holders**

5 45. Neither Maricopa Ambulance nor any of the intervenors presented
6 evidence of the expected financial impact if Maricopa Ambulance completed the
7 projected 24,519 IFTs, convalescent transports, and 911 transports during its first year
8 of operation. The intervenors noted that they would not provide any ambulance
9 services that Maricopa Ambulance provided.

10 46. In the hearing on AMR's application for a CON in Case No. 2014A-EMS-
11 0305-DHS, Glenn Kasprzyk explained that many of AMR's calls would come from
12 population growth, overflow that existing providers could not handle, and unusual
13 circumstances such as large scale incidents. Maricopa Ambulance pointed out that
14 many of its projected calls could also result from population growth, overflow, and
15 unusual circumstances.

16 47. Mr. Gibson acknowledged that if the Bureau granted Maricopa Ambulance's
17 application for a CON, there was no guarantee that it would make even one transport,
18 other than the IFTs from the 18 NextCare facilities in Maricopa County. Maricopa
19 Ambulance would have to earn the business of facilities that used ambulance services
20 by offering high quality services that respond to customers' stated needs and providing
21 innovation.

22 **Whether Maricopa Ambulance Established Substandard Performance by AMR,**
23 **ABC, or Rural/Metro**

24 48. Maricopa Ambulance's witnesses acknowledged that consumers were
25 generally satisfied with AMR's services. Although the Bureau had formulated a
26 contingency plan during the pendency of Rural/Metro's bankruptcy for the possibility
27 that it would not be able to provide transports, the contingency plan was never put into
28 operation.

29 49. Maricopa Ambulance presented some anecdotal evidence from David
30 Starrett, the Executive Director of Plaza Healthcare, about problems that he had

1 experienced with Rural/Metro's ambulance service. Mr. Starrett's testimony was
2 consistent with evidence from the hearing on AMR's application for a CON in Case No.
3 2014A-EMS-0305-DHS about deficiencies in Rural Metro's performance and health
4 care providers' concerns when it was the only private ambulance provider in Maricopa
5 County.

6 50. Maricopa Ambulance's witness David Lindberg performed an analysis of
7 Rural/Metro's response times in 2014 and 2015 based on the City of Phoenix's data.
8 Mr. Lindberg testified that according to his analysis, Rural/Metro's emergency response
9 times complied with the requirements on its CONs less than 90% of the time. Mr.
10 Lindberg acknowledged that municipalities may allow for exceptions for harsh weather
11 or road closures.

12 51. Rural/Metro's Business Analysis Manager, Marco Rivera, Jr., testified that
13 he had performed an analysis of Rural/Metro's response times for all the jurisdictions in
14 which it provided emergency transports over fifteen months during 2014 and 2015.³
15 Mr. Rivera concluded that outside of a several month decline caused by staffing issues
16 in one jurisdiction, which was resolved after several months, Rural/Metro had
17 consistently exceeded the benchmarks in its CONs and contracts with cities.

18 52. The Bureau has renewed unconditionally all of Rural/Metro's CONs that
19 have come due for renewal over the past fifteen months.

20 **Solvency and Financial Strength of Existing CON Holders**

21 53. Maricopa Ambulance's expert witness Robert J. DeLuca, CPA, CFF,
22 testified that Rural/Metro's 2013-2014 audited financial statement was concerning
23 because it showed Rural/Metro accounts receivable had significantly increased, its
24 long-term debt and operating losses were significant for a company of its size, and it
25 did not appear to have sufficient money to pay interest on its long-term debt.⁴

26 54. Substantial evidence of AMR's parent company's financial strength was
27 presented at the hearing on AMR's application for a CON in Case No. 2014A-EMS-
28 0305-DHS. AMR's post-hearing memorandum pointed out that AMR's 2014 Form 10-K
29

30 ³ See Rural/Metro's Exhibit 156.

⁴ Testimony on October 29, 2015, discussion Exhibit MA45E.

1 filing with the United States Securities and Exchange Commission showed that AMR's
2 parent corporation earned \$388 million of income from operations during the 2014
3 fiscal year, up from \$277 million for the prior year, and that it had a \$114 million
4 improvement in end of year cash balances, to \$319 million, after a \$78 million
5 investment in new equipment to support ongoing operations.⁵

6 55. In the US SEC Form 8-K that AMR's parent filed in 2015, the Securities and
7 Exchange Commission to obtain its approval of AMR's parent company's acquisition of
8 Rural/Metro's parent company, AMR's parent company disclosed that it may not be
9 able to successfully integrated Rural/Metro's operations and that expected synergies
10 and financial benefits of the acquisition may not occur.

11 56. Evidence at the hearing indicated that AMR has committed to invest
12 significant sums to replace Rural/Metro's outdated technology and ambulances. AMR
13 also anticipates that it may be able to introduce efficiencies to eliminate overlap in
14 services among Rural/Metro's constituent CONs.

15 Other Matters

16 **The Effects of Competition among Private Ambulance Service Providers**

17 57. Maricopa Ambulance's witness David Argue, PhD testified that enhanced
18 competition results in a better outcome for municipalities and facilities. At the AMR
19 hearing, AMR's witnesses also testified that having more than one private provider who
20 can respond to municipal requests for proposals improves service options, reduces
21 response times, and reduces costs.

22 58. Many healthcare facilities enter into non-exclusive arrangements with
23 ambulance providers for IFTs and convalescent transports. Most municipal or public
24 CON holders do not provide IFTs. Because AMR and ABC are the primary providers of
25 IFTs and ABC's CON limits the number of ambulances that it can use, some health
26 care facilities have expressed a desire that the Bureau grant Maricopa Ambulance's
27 application for a CON so that health care providers have a greater choice for IFTs and
28 convalescent transports.

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⁵ See AMR's post-hearing memorandum at 42.

Other Information in ADHS's Guidance Document

1
2 59. As noted on its application, Maricopa Ambulance already has an office in
3 Maricopa County and has selected vendors of ambulances and communications
4 equipment, is working with a vendor of a system of electronic patient care reports
5 (ePCR) called Zoi, is committed to participating in the AZ-PIERS system, has entered
6 into contracts with Maricopa Medical Center for it to serve as base hospital, and has
7 developed a plan for implementing a program of mobile integrated health care. Some
8 of these innovations may require additional funding from EEF or approval from the
9 Bureau.

10 **WHETHER MARICOPA AMBULANCE IS FIT AND PROPER TO BE ISSUED A CON**

11 **MARICOPA AMBULANCE'S FINANCES AND FINANCIAL BACKING**

12 60. Maricopa Ambulance presented evidence that because it is a limited
13 liability company, it would not have to pay state income tax, which the Bureau deducted
14 from projected net income. Maricopa Ambulance calculated that the increase from the
15 initial rates to the uniform rates and the elimination of state income tax would increase
16 Maricopa Ambulance's first-year net profit by \$86,334.00. Ms. Ponczak testified that
17 although Maricopa Ambulance accepted the Bureau's findings, Maricopa Ambulance
18 believes that it can do better.

19 61. EEF is a private equity firm that currently has over \$600 million under
20 management and a mandate to build companies in health care services. EEF currently
21 owns the sixth-largest dermatology company in the United States, a primary care
22 network in Florida, a clinical lab company in Southern California, one of the largest pain
23 practices in the United States, and the largest urgent care provider in the United
24 States, NextCare.

25 62. Among EEF's health care holdings is Priority and other related entities.
26 Priority was created in December 2013, to acquire existing or to start up new
27 ambulance companies nationwide. Priority aspires to become another ambulance
28 company with a national presence.

29 63. In addition to attempting to start Maricopa Ambulance, Priority acquired
30 Trans Am Ambulance Service, Inc. in New York in November 2014, Utica Ambulance

1 Service, Inc. in New York in March 2014, and Seals Ambulance Service, Inc. in Indiana
2 in January 2015. Priority also started up Shoals Ambulance, LLC in Alabama
3 (“Shoals”), and Priority Ambulance in Tennessee (“Priority Tennessee”) in December
4 2013. Priority purchased both of these startup companies from Mr. Gibson, its CEO.
5 Priority also formed Priority Billing, LLC in March 2014. At the time of the hearing,
6 Priority was investigating three other new markets.

7 64. Priority currently generates \$55 million in revenue and \$5 million in EBITDA
8 per year.⁶ Priority currently performs approximately 160,000 transports per year. After
9 Priority took over the start-up operations in Alabama and Tennessee, it was able to
10 achieve positive EBITDA for both operations within 18 months. None of Priority’s
11 current operations have any issues with their regulators.

12 65. EEF has committed \$7 million to cover Maricopa Ambulance’s startup
13 costs. Samarth Chandra, the partner at EEF who oversees Priority and Maricopa
14 Ambulance, testified that Priority’s management team has the full backing of EEF and
15 that EEF is willing to provide additional funds for Maricopa Ambulance’s startup
16 operations if necessary.

17 **EEF’s Past Investment in FirstMed**

18 66. In 2010, EEF made its initial investment in the ambulance industry. Over
19 the next year, EEF purchased four ambulance companies: (1) American Ambulance
20 and Ambulette Service in December 2010; (2) FirstMed in April 2011; (3) Life
21 Ambulance in June 2011; and (4) MedCorp in December 2011 (collectively,
22 “FirstMed”).

23 67. In 2010, Ohio’s Medicaid program changed the way it reimbursed
24 ambulances for transporting patients by directly paying nursing homes \$1.08 per month
25 per patient to cover ambulance transports. Not only was it more difficult to obtain
26 payment from nursing homes than from the state Medicaid program, but the fixed fee
27 provided an incentive for nursing homes to overutilize ambulance transports. In
28

29 ⁶ EBITDA is an accounting term for Earnings Before Interest, Taxes, Depreciation, and Amortization.
30 Samarth Chandra of EEF called EBITDA the proxy for profit generated by a company and the standard
by which most companies are valued.

1 addition, FirstMed's prior management team had entered into contracts for a large
2 number of wheelchair transports in Ohio, which contracts are generally unprofitable.
3 For these reasons, FirstMed was unprofitable because every transport that it made in
4 Ohio cost EEF \$50.00.

5 68. In August 2013, EEF hired Mr. Gibson as FirstMed's CEO with the mandate
6 to develop a strategy to grow FirstMed and stop its ongoing loss of significant cash
7 infusions from EEF. Mr. Gibson testified that after he was hired, he did everything he
8 could to right-size FirstMed.

9 69. After August 2103, FirstMed also recruited and hired Steve Blackburn, Bob
10 Jewell, and Kristi Ponczak to join FirstMed's management team.

11 70. In the months preceding December 2013, EEF attempted to reach a loan
12 workout agreement with FirstMed's senior lenders, Bank of Montreal and F&M Bank of
13 Texas. Mr. Chandra testified that both lenders had to agree to a workout for FirstMed
14 to succeed. Neither Mr. Gibson nor any other members of Priority's current
15 management team were involved in EEF's attempts to negotiate a workout agreement.
16 However, Mr. Gibson identified certain business opportunities for growth that EEF
17 presented to its lenders as part of negotiations for the loan workout in November 2013.

18 71. Included among the opportunities for growth was Mr. Gibson's startup
19 businesses, Shoals and Tennessee Priority. On November 6, 2013, Shoals was
20 registered to do business in Tennessee. On November 25, 2013, Shoals in Tennessee
21 changed its assumed name to Priority Ambulance. Mr. Gibson explained that he had
22 certain prior rights to use the trade name, Priority.

23 72. On November 7 and 13, 2013, EEF met with lenders and made a proposal
24 to the senior lenders to restructure their debt. The liquidation analysis for FirstMed
25 indicated that it was worth \$4.7 million. EEF proposed to invest another \$10 million in
26 FirstMed on the condition that the senior lenders reduce their debt from \$28 million to
27 \$10 million in exchange for a 16.7% ownership in the company. If the banks agreed,
28 EEF's \$40 million investment in FirstMed to that point of the agreement would be
29 extinguished, even though it was the only entity investing new funds into FirstMed.
30

1 73. Part of EEF's negotiations included the threat that FirstMed would file for
2 protection under Chapter 7 of bankruptcy code, rather than Chapter 11, which would
3 have allowed FirstMed the possibility of a continued existence.

4 74. On December 5, 2013, Priority was formed at the direction of Mr. Chandra.
5 Due to EEF's inability to resolve its disputes with FirstMed's senior lenders, FirstMed
6 never acquired Shoals in Alabama or Priority in Tennessee.

7 75. Mr. Chandra testified that although the probability of a workout appeared to
8 be increasingly remote, it was not until the morning of December 6, 2013, when he
9 became certain a restructuring proposal could not be reached with FirstMed's senior
10 lenders. Ultimately, the Bank of Montreal agreed but F&M Bank of Texas did not agree
11 to EEF's proposed workout.

12 76. On December 6, 2013, EEF's Board of Directors directed Mr. Gibson to
13 shut down FirstMed because there was only enough money to pay employees for work
14 done through that day. By that time, Mr. Chandra was the only remaining member of
15 the Board of Directors. Because the banks froze FirstMed's assets, FirstMed's
16 employees, including Mr. Gibson and other managers, did not receive their final
17 paycheck from FirstMed.

18 77. FirstMed did not provide any advance notice to its customers, employees,
19 creditors, or the local regulatory agencies of the shutdown of any of its operations.

20 78. On December 6, 2013, FirstMed announced that it would file for protection
21 under Chapter 7 of the United States Bankruptcy Code.

22 79. Mr. Gibson prepared a written plan to wind down FirstMed's business,
23 including transferring interfacility patients to other ambulance providers, securing all
24 ambulances, narcotics, and patient information, communicating to all affected parties,
25 and sending written notification to health care facilities and state and local officials.

26 80. FirstMed had been providing emergency transports in two counties, Bertie
27 County in North Carolina and Nicholas County in Kentucky. Emergency transports in
28 these two counties represented less than 2% of FirstMed's business. On December 6,
29 2013, Mr. Gibson informed EEF's board that FirstMed could not shut down these two
30 operations immediately without providing for a transition. In Bertie County, the

1 transition occurred over approximately seven days, during which Bertie County
2 declared a state of emergency so that it could purchase ambulances. In Nicholas
3 County, the county owned the ambulances and after the bankruptcy, hired FirstMed's
4 former staff to continue to provide emergency ambulance service to the county.

5 81. Several thousand people lost their jobs without notice when FirstMed
6 ceased operations on December 6, 2013. Numerous media reports documented
7 disruption caused by FirstMed's abrupt termination of its operations. No evidence was
8 presented that other ambulance providers did not step in to fill the gap or that any
9 requested IFT or emergency transport was not made due to FirstMed's abrupt business
10 closure and bankruptcy.

11 82. On December 11, 2013, FirstMed filed for bankruptcy under Chapter 7 in
12 the United States Bankruptcy Court for the Eastern District of North Carolina ("the
13 bankruptcy"). The trustee requested that a law firm be appointed to investigate the
14 "intentional, reckless, or negligent actions taken by the insiders that caused injury to"
15 FirstMed and its creditors. The bankruptcy firm granted the motion and appointed a
16 law firm to investigate the claims.

17 83. After the investigation, in November 2015, during hearing in this matter, the
18 bankruptcy trustee filed an adversary complaint against EEF, Mr. Chandra, Mr. Gibson,
19 Mr. Blackburn, and Shoals Ambulance, LLC, alleging among other claims breaches of
20 fiduciary duty, misappropriation of corporate opportunities, conversion, and fraudulent
21 transfer. The adversary complaint alleged that the management team purposefully
22 slashed revenue in Ohio to create financial instability for FirstMed and that that the
23 management team failed to focus on improving FirstMed's performance, instead
24 focusing on expansion plans in other states. The trustee alleged that FirstMed entities
25 paid for expansion under the names Priority Ambulance and Shoals Ambulance to the
26 detriment of FirstMed.

27 84. On December 16, 2013, a second adversary complaint was filed in
28 FirstMed's bankruptcy that alleged FirstMed violated federal and state statutes by
29
30

1 failing to file a WARN notice.⁷ In its answer, the trustee admitted that EEF exercised
2 control over FirstMed, that EEF and Mr. Chandra directed FirstMed to shut the
3 company down and to file for Chapter 7 protection, and that equipment and
4 ambulances were improperly transferred from FirstMed to operations in Alabama and
5 Tennessee that were owned by or affiliated with Mr. Gibson.

6 85. The defendants contested the allegations made in the adversary
7 proceedings and have filed a motion to dismiss some of the claims for legal
8 insufficiency, which was pending at the time the record closed in this matter. No final
9 judgment has been issued in the adversary complaints in FirstMed's bankruptcy.
10 Neither FirstMed nor any members of its former management team have been
11 sanctioned or disciplined by any of FirstMed's former regulatory agencies.

12 86. Maricopa Ambulance's witnesses testified about the allegations in the
13 adversary proceedings, as follows:

14 86.1 Mr. Chandra testified that FirstMed did not issue a termination notice or
15 WARN notice because such notice would have broken an already fragile company. Mr.
16 Chandra explained that a failing company and unforeseen business circumstances are
17 exemptions to the requirement of a WARN notice.

18 86.2 On November 7, 2013, FirstMed was billed for business cards for a
19 "Priority Ambulance." However, Maricopa Ambulance pointed out that there was no
20 intent to usurp corporate opportunities because the email address on the card was
21 FirstMed's.

22 86.3 A number of FirstMed ambulances were sent to Alabama and Tennessee
23 and rebranded as "Shoals Ambulance" or "Priority Ambulance," even though at that
24 time FirstMed did not have operations in either Alabama or Tennessee. Mr. Gibson
25 explained that EEF and FirstMed planned to buy Shoals and that the ambulances were
26 not being used in Ohio.

27 86.4 In addition, Mr. Gibson testified that Alabama required an ambulance to
28 be present at high school football games and three FirstMed ambulances were
29 transferred for the purpose. Mr. Gibson agreed that if the ambulances had been

30 _____
⁷ Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 *et seq.*

1 borrowed only to provide coverage for high school football games, they would not have
2 needed to be rebranded.

3 86.5 On December 2, 2013, Mr. Gibson as the CEO of Priority Ambulance
4 issued a press release regarding a charitable donation. Mr. Gibson explained that
5 although he had committed to make the donation while negotiations were ongoing with
6 FirstMed's senior lenders, by the time the donation was due, it was evident that Shoals
7 was not going to be purchased by FirstMed and that it was going to open an operation
8 in Tennessee under the Priority name.

9 87. On December 23, 2013, Priority purchased Shoals Ambulance from Mr.
10 Gibson.

11 88. In January 2014, Priority hired Mr. Gibson, Mr. Blackburn, and Ms.
12 Ponczak.

13 89. Mr. Chandra testified that Priority is a much stronger company than
14 FirstMed because it started with a good management team and is already showing a
15 profit. Mr. Chandra testified that EEF is in the business of building companies over a
16 long period of time. EEF has invested in 190 companies and FirstMed was its only
17 bankruptcy. Mr. Chandra testified that it was more important than ever for EEF to
18 ensure that Priority succeeds due to the legacy of FirstMed and the relationship that
19 EEF is building with Priority's current management team.

20 90. Mr. Chandra and Mr. Gibson have personally invested in Priority
21 Ambulance.

22 **CONCLUSIONS OF LAW**

23 1. The Director of ADHS has jurisdiction to consider whether to grant or to deny
24 Maricopa Ambulance's application for a CON.⁸

25 2. Maricopa Ambulance bears the burden to prove by a preponderance of the
26 evidence that the Director of ADHS should grant the proposed CON.⁹ AMR, Rural/
27
28

29 ⁸ See A.R.S. § 36-2233.

30 ⁹ See A.R.S. § 41-1092.07(G)(1); A.A.C. R2-19-119(A) and R2-19-119(B)(1); *see also Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

1 Metro, and ABC bear the burden to establish affirmative defenses by the same
2 evidentiary standard.¹⁰

3 3. “A preponderance of the evidence is such proof as convinces the trier of fact
4 that the contention is more probably true than not.”¹¹ A preponderance of the evidence
5 is “[t]he greater weight of the evidence, not necessarily established by the greater
6 number of witnesses testifying to a fact but by evidence that has the most convincing
7 force; superior evidentiary weight that, though not sufficient to free the mind wholly from
8 all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of
9 the issue rather than the other.”¹²

10 4. The Arizona Legislature, through enactment of the CON statutes, mandated
11 a fully regulated ambulance industry under ADHS.¹³ In addition to this statutory
12 mandate, ADHS has adopted rules to regulate ambulances and ambulance services.¹⁴
13 Any person who wants to operate an ambulance in Arizona must be granted a CON by
14 the Bureau.¹⁵

15 5. In the past, ADHS was not the agency who regulated the ambulance industry
16 and, instead, the Arizona Corporation Commission (“ACC”) regulated the industry.
17 Under the former ACC regulatory model, ambulance service providers were regulated
18 as common carriers. To receive a CON under the ACC regulatory model, applicants
19 not only had to prove that an unmet need existed, but the current provider had to be
20 given the right of first refusal to satisfy the unmet need.

21 6. The Arizona Legislature modified the requirements for an applicant to obtain
22 a CON when it authorized ADHS to regulate the ambulance industry. The concept of
23 unmet need has been replaced in the current regulatory framework by the concept of
24 public necessity and the public’s best interest. The concept of considering a current
25 provider’s right of first refusal has been abandoned under the current regulatory model.

26
27

¹⁰ See A.A.C. R2-19-119(B)(2).

28 ¹¹ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

29 ¹² BLACK’S LAW DICTIONARY at page 1220 (8th ed. 1999).

30 ¹³ See *generally* Ariz. Const., art. XXVII, § 1, and A.R.S. §§ 36-2232 through 36-2246.

¹⁴ See A.A.C. R9-25-901 through R9-25-1201.

¹⁵ See A.R.S. § 36-2233(A).

1 7. The current regulatory environment is governed by concepts of “public
2 necessity” and the “public’s best interest,” rather than any over-riding concern about
3 protecting the service areas of existing CON holders. Under the Bureau, the focus is
4 on public health and safety and the determination of public necessity is based on
5 numerous factors which examines whether the public’s best interests are served with
6 respect to the provision of emergency medical services.

7 8. A.R.S. § 36-2233(B) provides that the Director of ADHS shall issue a CON to
8 an applicant if it meets certain conditions. The only conditions that AMR, Rural/Metro,
9 and ABC disputed that Maricopa Ambulance had established in its application and
10 evidence at the hearing were whether public necessity required Maricopa Ambulance’s
11 services under A.R.S. § 36-2233(B)(2) and whether Maricopa Ambulance was fit and
12 proper to provide the proposed service or any part of the service under A.R.S. § 36-
13 2233(B)(3).

14 **WHETHER MARICOPA AMBULANCE HAS ESTABLISHED THAT PUBLIC NECESSITY REQUIRES THE**
15 **DIRECTOR OF ADHS TO GRANT A CON TO IT**

16 9. Public necessity means “an identified population needs or requires all or
17 part of the services of a ground ambulance service.”¹⁶ Pursuant to its statutory
18 authority, ADHS has promulgated A.A.C. R9-25-903, which provides guidance for
19 determining public necessity under A.R.S. § 36-2233(B)(2). A.A.C. R9-25-903 provides
20 as follows:

21 A. In determining public necessity for an initial or amended
22 certificate of necessity, the Director shall consider the
23 following:

- 24 1. The response times, response codes, and response-time
25 tolerances proposed by the applicant for the service area;
26 2. The population demographics within the proposed service
27 area;
28 3. The geographic distribution of health care institutions
29 within and surrounding the service area;

30 ¹⁶ A.A.C. R9-25-901(33).

1 4. Whether issuing a certificate of necessity to more than
2 one ambulance service within the same service area is in
3 the public's best interest, based on:

4 a. The existence of ground ambulance service to all or part
5 of the service area;

6 b. The response times of and response-time tolerances for
7 ground ambulance service to all or part of the service area;

8 c. The availability of certificate holders in all or part of the
9 service area; and

10 d. The availability of emergency medical services in all or
11 part of the service area; [and]

12

13 6. Other matters determined by the Director or the applicant
14 to be relevant to the determination of public necessity.

15 B. In deciding whether to issue a certificate of necessity to
16 more than one ground ambulance service for convalescent
17 or interfacility transport for the same service area or
18 overlapping service areas, the Director shall consider the
19 following:

20 1. The factors in subsections (A)(2), (A)(3), (A)(4)(a),
21 (A)(4)(c), (A)(4)(d), (A)(5), and (A)(6);

22 2. The financial impact on certificate holders whose service
23 area includes all or part of the service area in the requested
24 certificate of necessity;

25 3. The need for additional convalescent or interfacility
26 transport; and

27 4. Whether a certificate holder for the service area has
28 demonstrated substandard performance.

29 C. In deciding whether to issue a certificate of necessity to
30 more than one ground ambulance service for a 9-1-1 or
similarly dispatched transport within the same service area
or overlapping service areas, the Director shall consider the
following:

1. The factors in subsections (A), (B)(2), and (B)(4);
2. The difference between the response times in the service area and proposed response times by the applicant

Response Times

10. Maricopa Ambulance’s proposed response times for emergency transports are comparable to the response times in AMR’s and Rural/Metro’s CONs.

11. It is not possible to fully compare Rural/Metro’s response times to Maricopa Ambulance’s proposed response times due to the difference in the way response times are calculated under Rural Metro’s older CONs.

12. AMR’s CON contains response times for IFTs and Maricopa Ambulance’s application does not contain any such response times. AMR established that it is mostly meeting its response times for IFTs. It may be that due to AMR’s method of calculating interfacility transport times, compliance with its CON is not a meaningful measure of performance.

13. ADHS/BEMSTS does not require CON applicants to provide response times for IFTs and convalescent transports and IFT response times are mostly a matter of contract or informal agreement between the health care facility and ambulance provider. At this time, the significance of IFT response times is a matter that should be resolved by the market, not through the Bureau’s decision to grant or deny a CON to Maricopa Ambulance.

**The Population and Demographics of Maricopa County,
the Geographic Distribution of Health Care Institutions, and
the Existence of Ground Ambulance Service to All or Part of the Service Area**

14. Maricopa County is the largest county in Arizona in terms of population.

15. Maricopa County is comprised of a relatively large geographical area that contains numerous municipalities and wide-spread health care facilities, including hospitals, residential care facilities, nursing homes, and urgent care centers.

16. Although AMR is available to provide emergency transports, IFTs, and convalescent transports, former Rural/Metro entities still provide the vast majority of

1 transports by a privately held entity. The evidence at the hearing indicated that
2 healthcare institutions are currently satisfied with AMR's performance.

3 17. The market for ambulance transport in Maricopa County is large enough to
4 sustain multiple private providers. Although AMR may be able to successfully absorb
5 Rural/Metro and provide good service, its success is not guaranteed and it is not clear
6 whether AMR will be able to successfully absorb the much larger Rural/Metro entities,
7 especially considering Rural/Metro's past performance and ongoing financial
8 challenges.

9 18. Although there are now numerous public CON holders in Maricopa County,
10 most only provide emergency transports. In addition, large areas of Maricopa County
11 are not served by a public provider and must rely on a private provider for emergency
12 transports, IFTs, and convalescent transports. ABC acknowledged that it cannot
13 provide a large number of these transports due to the limitations in its CON.

14 19. Past history from the evidence that was submitted at the hearing in Case
15 No. 2014A-EMS-0305-DHS and Maricopa Ambulance's evidence that was submitted in
16 this matter establishes that competition among private providers of ambulance service
17 in a large market serves a public necessity.

18 **The Financial Impact on AMR (including former Rural/Metro) and ABC**

19 20. AMR, Rural/Metro, and ABC did not present any evidence to establish
20 whether ADHS's Director's grant of a CON to Maricopa Ambulance will financially
21 impact them or if so, the extent of the financial impact. Given the uncertainties in the
22 current ambulance market, it does not appear that granting a CON to Maricopa
23 Ambulance, without more, will drive any the current providers out of business. As
24 noted above, protecting a current provider's monopoly is not a determinative or even a
25 substantial factor under the current regulatory model

26 21. Maricopa Ambulance's projected 24,519 transports is a small percentage of
27 the more than 300,000 annual calls for ambulance service in Maricopa County. If
28 ADHS grants Maricopa Ambulance's application for a CON, AMR and ABC will have
29 had a significant head start in obtaining contracts with providers for IFTs and
30 convalescent transports and contracts with municipalities for emergency transports.

1 22. Maricopa Ambulance established that its backer, EEF, is committed to
2 provide substantial financial support to help it compete in the Maricopa County market.
3 As Maricopa Ambulance's witnesses testified, it has no guarantee that it will take any
4 transports away from AMR (and former Rural/Metro) if it is granted a CON, with the
5 exception of the IFTs from the NextCare locations. Any additional effect of a grant of a
6 CON to Maricopa Ambulance will be decided by the market. No evidence was
7 presented that the presence of two national ambulance services providers in this large
8 market is likely to lead to financial ruin for either or both of them, to the detriment of the
9 public.

10 Other Factors

11 23. Pursuant to the authority given by A.A.C. R9-25-903(A)(6), ADHS/BEMSTS
12 has adopted a Guidance Document to set forth "other matters determined to be
13 relevant to the determination of public necessity." The Guidance Document contains
14 the following additional considerations for determining public necessity:

- 15 • A plan for a robust, on-going benchmarking and performance
16 improvement process that encompasses all components of the EMS
17 system from emergency medical dispatch through emergency department
18 arrival;
- 19 • A plan to collect and submit electronic patient care reports consistent
20 with BEMSTS guidelines;
- 21 • A plan to adopt clinical guidelines and operating procedures for time
22 sensitive illness consistent with best practice guidelines;
- 23 • A plan to initiate guideline-based pre-arrival instructions for all callers
24 accessing 9-1-1 for assistance;
- 25 • Evidence of regular attendance and participation in meetings of the
26 regional and State EMS Councils;
- 27 • A plan to ensure that ambulance service will be maintained and
28 improved for rural communities; and
29
30

- Assurance that the service model will be cost effective and not result in higher ambulance rates.¹⁷

24. Maricopa Ambulance established that it is committed to achieving the factors listed in the ADHS/BEMSTS's guidance document if it is granted a CON.

**WHETHER MARICOPA AMBULANCE IS FIT AND PROPER
TO PROVIDE AMBULANCE SERVICES IN MARICOPA COUNTY**

25. Fit and proper means "that the director determines that an application for a certificate of necessity or a certificate holder has the expertise, integrity, fiscal competence, and resources to provide ambulance service in the service area." A.R.S. § 36-2201(21).

26. Maricopa Ambulance established that the management team at Priority is experienced and well qualified.

27. The intervenors did not establish that Mr. Gibson, Mr. Blackburn, Ms. Ponczak, or Mr. Jewell caused or contributed to Rural/Metro's Chapter 11 bankruptcy.

28. With respect to the adversary proceeding in First/Med's Chapter 7 bankruptcy, as Maricopa Ambulance pointed out, allegations in a complaint are not evidence, unless admitted by the adverse party or proven by the proponent.¹⁸ The unresolved complaint allegations in the adversary proceeding against Mr. Gibson, Mr. Blackburn, and Mr. Jewell based on their involvement with FirstMed during the last five or six months of its existence do not establish that they lack integrity and are not fit and proper to manage Maricopa Ambulance. Likewise, the complaint allegations do not prove unethical or illegal conduct by Mr. Chandra or by EEF.

29. EEF controlled FirstMed's board of directors. Mr. Chandra testified that he chose to cause FirstMed to seek protection under Chapter 7 of the Bankruptcy Code rather than continue to heavily subsidize FirstMed's operations indefinitely, to the detriment of EEF's investors. As Mr. Chandra acknowledged, FirstMed was a disaster and a significant blot on EEF's reputation with its investors, as well as the public that formerly was served by FirstMed. No evidence at this time indicates that this was not a

¹⁷ MA-7 at 3.

¹⁸ See *United States v. Bailey*, 696 F.3d 794, 801 (9th Cir. 2012).

1 sound business decision, that the decision was made for an improper purpose, that the
2 public was actually harmed, or that EEF is likely to repeat the same course of conduct
3 with Priority.

4 30. Large national ambulance companies like AMR's parent and Priority reflect
5 the future of the ambulance business. Such companies are measured by their success
6 in the market, which is in part determined by their compliance with governmental
7 regulations, as well as market performance, innovations, and efficiencies of scale. EEF
8 has already invested at least \$7 million in Maricopa Ambulance. Mr. Chandra credibly
9 testified that EEF is much more committed to Maricopa Ambulance's success due to the
10 legacy of FirstMed. Maricopa Ambulance established that it has the fiscal competence
11 and resources to provide ambulance service in Maricopa County.

12 **OTHER CONSIDERATIONS**

13 31. A.R.S. § 36-2235(B) provides that on the expiration on the one-year term of
14 an initial CON, the Director of ADHS may review whether the CON holder has complied
15 with the terms of the CON. A.R.S. § 36-2236 provides that a CON is not a franchise,
16 may be revoked by the Director, and does not confer a property right on its holder. In
17 the event that Maricopa Ambulance does not live up to the promises made at the
18 hearing, ADHS/BEMSTS retains the power to protect the public.

19 **RECOMMENDED DECISION**

20 In view of the foregoing, it is recommended that the Director approve the
21 proposed Application, directing BEMSTS to issue a CON to Maricopa Ambulance upon
22 its confirmation that it is ready to immediately assume all rights and responsibilities
23 under that CON.

24 *In the event of certification of the Administrative Law Judge Decision by the*
25 *Director of the Office of Administrative Hearings, the effective date of the Order is five*
26 *days after the date of that certification.*

27 Done this day, April 18, 2016.

28 /s/ Diane Mihalsky
29 Administrative Law Judge
30

1 Copy e-mailed this 18th day of April, 2016, to all parties and interested persons on the
2 approved mailing list.

3 By: autogenerated and posted to [https://portal.azoah.com/oedf/documents/2015A-EMS-
4 0190-DHS/index.html](https://portal.azoah.com/oedf/documents/2015A-EMS-0190-DHS/index.html)

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