1 BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

2

3 In the Matter of:

4 RBR Management LLC, dba Community Ambulance

5 Applicant

6 and

7 ABC Ambulance, Maricopa
8 Ambulance, LLC, American Medical Response of Maricopa, LLC, Canyon
9 State Ambulance, Southwest Ambulance and Rescue of Arizona,
10 Life Line Ambulance Service, Southwest Ambulance Maricopa,
11 Rural/Metro Corp - Maricopa, ComTrans Ambulance Service, Inc.,
12 Professional Medical Transport, Inc., and American Ambulance

13 Intervenors

14 ______________________________________

Docket No. 2017-EMS-0104-DHS
(EMS No. 0283)

15 At: Phoenix, Arizona

16 Date: October 23, 2018

17

REPORTER'S TRANSCRIPT OF PROCEEDINGS

18

VOLUME 2

19

(Pages 264 through 564)

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COASH & COASH, INC.
21 Court Reporting, Video & Videoconferencing
1802 North 7th Street, Phoenix, Arizona 85006
22 602-258-1440 staff@coashandcoash.com

23

Prepared By:
24 MERI COASH RMR, CRR
Certified Reporter
25 Certificate No. 50327

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1 BE IT REMEMBERED that the above-entitled
2 and -numbered matter came on regularly to be heard before
3 the Office of Administrative Hearings, 1740 West Adams
4 Street, Board Room C, Phoenix, Arizona, commencing at 8:38
5 a.m., on the 23rd day of October, 2018.
6
7 BEFORE: Administrative Law Judge Tammy L. Eigenheer
8
9 For the Applicant:
10 HENDRICKS MURPHY, PLLC
By: Brendan Murphy, Esq.
11 3101 North Central Avenue
Suite 970
12 Phoenix, Arizona 85012
602-604-2104
13 brendan@hendricksmurphy.com
14 and
15 THE MEYERSON LAW FIRM, PLC
By: Jeffrey Meyerson, Esq.
16 2555 East Camelback Road
Suite 140
17 Phoenix, Arizona 85016
480-305-0974
18 jeff@themeyersonfirm.com
19
20 For Intervenor Arizona Department of Health
Services/Bureau of Emergency Medical Services and Trauma
21 System:
OFFICE OF THE ATTORNEY GENERAL
22 By: Kevin Ray, Esq.
1275 West Washington Street
23 Phoenix, Arizona 85007
602-542-8328
24 educationhealth@azag.gov
25

1 For Intervenor AMR CON Holders:
FLETCHER STRUSE FICKBOHM & WAGNER, PLC
2 By: Ronna L. Fickbohm, Esq.
6750 North Oracle Road
3 Tucson, Arizona 85704
520-575-5555
4 rfickbohm@tucsontrusts.com

5 and

6 SHORALL McGOLDRICK BRINKMANN
By: Paul J. McGoldrick, Esq.
7 1232 East Missouri Avenue
Phoenix, Arizona 85014
8 602-230-5400
paulmcgoldrick@smbattorneys.com
9

10 For Intervenor Maricopa Ambulance, LLC
J. BELANGER LAW PLLC
11 By: James Belanger, Esq.
P.O. Box 447
12 Tempe, Arizona 85280
602-253-6682
13 jjb@jbelangerlaw.com

14
For Intervenor ABC Ambulance, LLC
15 HOFMEYR LAW PLLC
By: Adriane J. Hofmeyr, Esq.
16 31 North 6th Avenue
Suite 105-466
17 Tucson, Arizona 85701
520-477-9035
18 adriane@hofmeyrlaw.com

19

20

21

22

23

24

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1 REPORTER'S TRANSCRIPT OF PROCEEDINGS
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3 ALJ EIGENHEER: Okay. We are back on the
4 record. It is October 23rd, 2018, at 8:38 a.m.
5 Again, my name is Tammy Eigenheer.
6 This is Docket Number 2017-EMS-0104. All
7 parties are present and represented.
8 Any preliminary matters on the record?
9 Okay. Then we will have the witness return.
10 I believe you were still on direct.
11 MR. MURPHY: Jeff O'Malley.
12 ALJ EIGENHEER: I will remind you you are
13 still under oath.
14 THE WITNESS: Thank you.
15 ALJ EIGENHEER: Please proceed.
16
17 JEFF O'MALLEY,
18 called as a witness on behalf of RBR Management, LLC,
19 herein, having been previously sworn by the Administrative
20 Law Judge to speak the truth and nothing but the truth,
21 was examined and testified as follows:
22
23 DIRECT EXAMINATION (CONTINUED)
24 BY MR. MURPHY:
25 Q. Good morning. We left off talking about data.

1 And I want to shift gears a little bit and
2 ask you if you were present when AMR's counsel questioned
3 Linda Hunt about discount rates -- discounted rates for
4 ambulance services.
5 A. Yes, I was.
6 Q. What do you recall about that testimony?
7 A. There was comments being made around the lack of
8 a discount being offered in the Community Ambulance
9 services agreement with Dignity Health.
10 MR. MURPHY: Your Honor, can I ask that
11 CA-24 be pulled up, please? And -- and sorry, Your Honor.
12 I should have said this. Attachment 1, which is -- I'll
13 give you the page. Page 12 of 16 of this agreement.
14 MR. McGOLDRICK: Excuse me. Before you ask
15 your question, I just want to raise an objection. The
16 question, as I recall, being asked to Ms. Hunt was about
17 whether the ARCRs reflected a discount in its application
18 to the Department. I don't believe it was in relation to
19 whether there was any discounts contemplated in the actual
20 agreement. With that, I just wanted to preserve our
21 position on that.
22 MR. BELANGER: I'll join that objection.
23 MR. MURPHY: If I may, Your Honor --
24 MS. HOFMEYR: We join as well.
25 MR. MURPHY: Sorry. I didn't mean to speak

1 over.
2 ALJ EIGENHEER: That's okay.
3 MR. MURPHY: And I don't have the transcript
4 in front of me. Although I have a rough, I haven't had an
5 opportunity to review it. I do recall that there was some
6 discussion about the application of a discounted rate to
7 customers, meaning the consuming public, the patients.
8 ALJ EIGENHEER: And it was in reference
9 to -- We had the ARCR on the screen as to -- there were
10 none identified on the ARCR.
11 MR. MURPHY: Okay. And -- and we'll --
12 we'll pull it up in the rough, but we believe that the
13 question whether the ARCR -- The ARCR was shown as an
14 exhibit. But that the question also involved a discussion
15 about the contract. But we'll look for it, and I'll --
16 I'll agree to strike the question if it turns out that
17 that's not the case.
18 MS. FICKBOHM: And I was asking those
19 questions, and I don't remember asking that question.
20 MR. MURPHY: Okay.
21 MS. FICKBOHM: I was just making a record of
22 the fact that the ARCR contemplated zero contractual
23 discounts the first year.
24 MR. MURPHY: Okay. Understood.
25 Okay. Let's just --

1 ALJ EIGENHEER: Sorry. So are you -- are
2 you asking separate questions at this point, or -- We can
3 talk about this. But the questions that were asked
4 previously were of the ARCR.
5 MR. MURPHY: And we have from the rough
6 transcript that was provided to everyone last night,
7 except -- I don't know if AMR was on the order -- the
8 question: "And are you aware that under Dignity's
9 contract with AMR, Dignity got a 30 percent break on
10 ambulance transport rates?"
11 "No, I was not aware of that."
12 "And does Dignity in the contract it has
13 pending with Maricopa Ambulance -- will it be entitled to
14 a contractual discount?" I think that meant to
15 be Community Ambulance?
16 MS. FICKBOHM: No, it was Maricopa
17 Ambulance --
18 MR. MURPHY: Oh, sorry.
19 MS. FICKBOHM: -- because they have a
20 pending contract with Maricopa Ambulance.
21 MR. MURPHY: "So wouldn't it be better for
22 Dignity to use providers that will give it a contractual
23 discount as opposed to using RBR who, in its financial
24 reporting to the state, said it would -- won't give
25 Dignity any discounts?"

1 So I'll withdraw the question, or we can
2 strike the testimony -- that's fine -- now that we've had
3 an opportunity to see this. And I apologize. The
4 inference, of course, is that there is not a similar
5 discount in the Community Ambulance proposed agreement,
6 and that's what we're going to address now through this
7 testimony.
8 ALJ EIGENHEER: Okay.
9 BY MR. MURPHY:
10 Q. Mr. O'Malley, if we could go to the top of this
11 Attachment 1 -- and we're still looking at just the
12 AMR-Dignity Health Customer Agreement -- can you read the
13 first sentence of this agreement -- of this Attachment 1,
14 please?
15 A. Yes, it says, "Pricing & Service Levels Defined.
16 The following pricing will be applied when the Customer
17 holds financial responsibility for the transport. Pricing
18 includes the maximum discount allowed by Arizona
19 Department of Health Services (30 percent)."
20 Q. Who is the customer under this agreement? And
21 you can look to the first page if you need to refresh
22 yourself on the answer.
23 A. It's Dignity Health.
24 Q. And how -- how would that discount apply to
25 patients?

1 A. That discount would not apply to patients. The
2 negotiation of these fees and that 30 percent discount was
3 between AMR and Dignity Health when Dignity Health is
4 financially responsible. So that would be the amount that
5 Dignity Health pays, not the amount that the patient would
6 pay.
7 Q. The amount that Dignity Health would pay to AMR?
8 A. Yes. The amount that the patient ends up paying
9 is a result of the insurance that they're going to have
10 and the negotiated contracts between the ambulance
11 companies and the insurance companies, so that would
12 prevail in all instances except for when Dignity Health is
13 financially responsible. At which point then these
14 contracted rates would go into place.
15 MR. MURPHY: Okay. Your Honor, can -- can
16 we also have CA-17, which is also in evidence? From the
17 first page.
18 BY MR. MURPHY:
19 Q. Mr. O'Malley, can you tell me what this agreement
20 is?
21 A. This is the proposed Ambulance Service Agreement
22 between RBR Management, doing business as Community
23 Ambulance, and Dignity Health.
24 Q. And how is Dignity Health defined in that first
25 sentence of this agreement?

1 A. Hospital.
2 MR. MURPHY: Okay. If we could turn again
3 to page 13 this time, Attachment 1. And that very top
4 there. Thank you, Your Honor.
5 BY MR. MURPHY:
6 Q. Mr. O'Malley, will you please read into the
7 record that -- that paragraph above the box of rates,
8 please?
9 A. It says, "Pricing & Service Levels Defined. The
10 following pricing will be applied when the Hospital holds
11 financial responsibility for the transport. Pricing
12 includes the maximum discount allowed by ADHS
13 (30 percent)."
14 Q. From -- Is this the same provision as you agreed
15 or negotiated in the AMR-Dignity Health agreement?
16 A. Yes.
17 Q. And how would Dignity Health's patients benefit,
18 if at all, from this discount?
19 A. It's the same situation. The patients don't
20 benefit. This is only when Dignity Health is the
21 financial responsible party.
22 Q. Picking back up from where we were with the data
23 and issues you were -- that Dignity Health and you were
24 having with the data reporting, at -- at some point during
25 that process, you -- had you learned or did you know about

1 problems that the Dignity Health facilities were having
2 with transport services provided by AMR?
3 A. Yeah. From the beginning, we were seeing
4 challenges. You know, when I took over the initiative and
5 I started creating the contacts throughout Dignity Health
6 of who was dealing with ambulance services, the concerns,
7 the complaints, the emails, the -- the issues that they
8 were experiencing were coming to me, so I was seeing them.
9 We would bring issues up when we met with AMR more so in
10 the beginning, I think, when there was a greater hope that
11 we were going to be able to address and improve some of
12 the services. But throughout the process, for the last
13 two and a half years, really, since I've been working on
14 this, it -- three years, effectively, you know, we've
15 continued to experience unacceptable issues related to
16 ambulance transportation.
17 Q. So how and who was reporting these issues to you?
18 A. Yeah, it was a lot of the folks in the beginning
19 that was on the steering committee -- or, that committee
20 that I mentioned earlier that I had put together, so that
21 was kind of the initial what are the challenges that
22 allowed us -- that informed the RFI that we ended up
23 distributing? Throughout the process, as I made more
24 connections throughout the organization, that -- that sort
25 of network, if you will, of ambulance customers within

1 Dignity Health increased. And so they would provide
2 comments to me via email. They would pick up the phone
3 and call me. You know, they would -- you know, they would
4 bring up concerns and issues during our meetings with AMR.
5 So a number of different ways. This would include some of
6 the EM -- emergency liaisons in our emergency departments,
7 case management teams, house coordinators and managers,
8 nurse leaders, really anybody who needed to pick up the
9 phone and call for an ambulance.
10 Q. Can you provide some specific names? And let's
11 put this in time. During the AMR-Dignity Health Customer
12 Agreement, which was executed November 1, 2015.
13 A. Okay. Specific people would include Brandon
14 Hestand; Becky Haas; you know, operational leads like
15 Brett McClain; West Valley Damon Denstone; hospital CEOs;
16 Patty White. At that time I believe it was still Tim
17 Bricker. We had input from physicians. Dr. Swearinger
18 [sic] was also providing input. We had -- I mean, it
19 seems like a lot. I'm probably not capturing enough of
20 the names. But generally, I was getting input from across
21 the Valley in different sites of service and different
22 organizations.
23 Q. So what sorts of specific problems were being
24 related to you?
25 A. It was the time limits of -- you know, arrival

1 times. It was the consistency, the reliability of
2 relia- -- of arrival times. It was, you know, being told
3 when they're on the phone, "If you need a faster response,
4 call 911." We felt like that was an abuse of the
5 emergency management system. It was "There's an ambulance
6 parked across the street. I can see it. It has your name
7 on it. Why can't you come over and pick it up?" And then
8 hearing all kinds of logistics challenges about why they
9 can't do that. It was unprofessionalism of crews, the
10 inability to get data, same issue that I had had as well.
11 Q. Were these issues raised? Yesterday you
12 testified about quarterly meetings that were held to
13 discuss the data. Were these issues discussed during
14 those quarterly meetings?
15 A. Yeah, I -- I believe they were more robust in the
16 beginning of the relationship when we had the optimism of
17 improvement and the intent to work together. I think over
18 time, people kept seeing reports that said a hundred
19 percent, hundred percent, hundred percent. We were, like,
20 this is not right. This cannot be right. We had too many
21 problems with those pickup times. It can't be right.
22 So, you know, I think there are still issues
23 coming up. I get emails -- Even last week, I got an
24 email where people are saying, "Here's another issue." I
25 reached out; I got a response, and the response is

1 typically -- whether it's AMR or whoever, the response is
2 typically, "Okay. Well, let's look into it. Let's
3 investigate." But the repetitive nature and the fact that
4 they keep reoccurring is, like -- I mean, we've been into
5 this relationship in a contract for two years and then out
6 of contract now for another year, so we have three years
7 of experience and we're still seeing similar issues
8 surface.
9 Q. With -- with AMR?
10 A. With AMR.
11 Q. Okay. And let's turn back, then, to Community
12 Ambulance and when you first had conversations with
13 anyone, whether it's in Dignity Health or Community
14 Ambulance, about the existence of Community Ambulance.
15 A. So the first time I met with internal folks on
16 Community Ambulance was not about Community Ambulance. It
17 was about ambulance problems that we were having in
18 Las Vegas.
19 Q. When was that?
20 A. The meeting was in March of 2015. So I had a
21 conversation with Laura Hennum, chief strategy officer for
22 Nevada at the time; Melissa Walker, chief financial
23 officer of Nevada; Greg Davis, chief strategy officer in
24 Arizona; and Matt Cox, chief financial officer of Arizona.
25 And we met to talk about this problem that we were having.

1 And I wanted to know what kind of situations were -- were
2 they in? What were their problems? You know, this is --
3 It's a little bit of misery loves company, but at the same
4 time it's more of how did you solve it? What did you do?
5 How did you figure it out? And so they talked about
6 developing a partnership. It was local, you know, with --
7 with people from the local market. And -- and they formed
8 this partnership and they've seen an incredible
9 improvement in the level of service.
10 So that first meeting, March of 2015, was
11 really about tapping into internal resources to better
12 understand how they addressed what appeared to be similar
13 issues to what we were having.
14 Q. And you testified yesterday Linda Hunt tasked you
15 with the assignment of solving the ambulance problem in
16 Arizona.
17 A. Yes.
18 Q. So this is part of that process?
19 A. Yes, yes.
20 Q. Okay. So after that March 2015 meeting, what --
21 what was next in your progression in this process?
22 A. Then I wanted to meet with Community Ambulance.
23 So I wanted to understand their operations. I wanted to
24 bring a few folks from Arizona. I think Gabe Gabriel
25 joined me. I'm trying to think of others. I know Laura

1 Hennum was there, Melissa Walker was there, Rob Richardson
2 was there. But I wanted to talk --
3 Q. When you say "there," where do you mean?
4 A. In Las Vegas, yeah.
5 Q. And when was this?
6 A. May of 2015.
7 Q. Okay.
8 A. Yeah, we went to -- I wanted to talk to them,
9 but more importantly, I wanted to have the leadership team
10 within Dignity Health who was at the table and part of the
11 board at that time -- Laura and Melissa were part of the
12 Community Ambulance board with their partner, Community
13 Ambulance, and then I wanted some of our clinical folks
14 like Gabe Gabriel with me to really talk about how did you
15 do it? What were those solutions? What did that look
16 like? You know, they could ask a lot more probing
17 questions than I can. So I wanted people with experience
18 dealing with those ambulance solutions at the table asking
19 those questions.
20 Q. How long did you meet with them in Las Vegas?
21 A. I'd say maybe two hours.
22 Q. Okay. And at that meeting or in May 2015, were
23 you considering bringing Community Ambulance to the
24 Arizona market at that time?
25 A. No. By that time, we had already effectively

1 committed to the RFI process. The intent -- Setting up
2 partnerships take a lot of effort, a lot of resources.
3 Building things from the ground up takes a lot of time and
4 effort. The preference -- You know, and this came out of
5 the committee conversations when we were building the RFI
6 and we were reviewing the results: Why don't we just try
7 and work locally? Why don't we try and identify a local
8 solution? We have company Rural/Metro who's been here.
9 Their performance was subpar, in our opinion. And we had
10 a new company AMR. They were saying a lot of great things
11 that they could do to improve transportation. So the
12 decision was let's move forward. It's the RFI. Let's
13 start working on building relationships with those two
14 local providers.
15 Q. But at some point you decided to bring Community
16 Ambulance into the Arizona market or a decision was made
17 to do that, right?
18 A. Yeah. I mean, there was -- You know, if -- if
19 you ask me for a day or a moment when we decided, I don't
20 think I can give that to you, you know. Our intent was
21 very straightforward.
22 Now, we talked about this yesterday. We
23 started with two providers. It ended up being one because
24 of the acquisition, so we only had one choice. We started
25 out with a contract that had a lot of really good stuff in

1 it that we thought we were going to get as part of the
2 relationship that did not materialize towards the end. So
3 everything that started to happen, even during the
4 negotiation process, kept pushing me back to "I don't know
5 if this is going to be the right solution long term."
6 Q. So putting this into time -- in a time frame,
7 that was summer and fall of 2000- --
8 A. Mostly in the fall --
9 Q. -- -15?
10 A. I'm sorry.
11 Mostly in the fall when we started to, you
12 know, finalize the terms of the agreement. We were
13 committed to the agreement with AMR. They were a
14 preferred provider. We put in a dedicated phone line that
15 went straight to them to take all of our ambulance. So we
16 went all in, complied with all the terms of the agreement.
17 And then, you know, we -- we -- Usually when you enter
18 these relationships, there's a honeymoon period where
19 it's, oh, this is fantastic. You know, they're -- they're
20 here; they're parked in our -- our ERs. Every day I walk
21 up, there's an AMR Ambulance by or near us. It's, like,
22 oh, this is fantastic. We're getting that initial
23 relationship high, if you will. We -- we kept watching
24 it, fully invested in that relationship.
25 The reports started coming out. Some of the

1 initial reports were showing, you know, subpar
2 performance. We were talking about those issues that I
3 referenced earlier. We kept having issues, kept having
4 problems and challenges. I kept getting information from
5 our internal constituents that I was mentioning earlier
6 about ongoing problems that we were having in ambulance
7 transportation and the confusion between, well, we've got
8 Rural/Metro and Southwest and PMT, but they're all kind of
9 AMR, and that was a lot of confusion within -- within the
10 AMR system as well.
11 But as that continued, what happened was I
12 kept leaning more and more on the relationship I was
13 building with Rob and Brian from Community Ambulance and
14 asking them questions. You know, "Hey, is this -- What
15 do you guys do? I mean, do you provide reports? Are you
16 providing data?" I wasn't on the board at that point, so
17 I didn't, you know, have that level of relationship. So I
18 kept -- The more I understood what -- the art of the
19 possible, if you will, the -- the less hope we started to
20 see in the AMR relationship.
21 So, you know, when you get into the spring
22 of 2016, you know, that March/April time frame, you know,
23 that's when Community Ambulance was the applicant, had
24 made the decision to move forward and submit -- and
25 prepare an application and submit it.

1 Q. What -- what, if any, involvement did you have in
2 preparing or submitting that application?
3 A. My responsibility was really to serve as the lead
4 representative in the Arizona market for Dignity Health to
5 advise on our needs. You know, what were the challenges?
6 What were the issues? What are the expectations? What is
7 the -- the complement of Dignity Health facilities?
8 What -- what is the Dignity Health patient population?
9 How would they be better served? What are some of the
10 complaints we're receiving internally? So I was trying to
11 inform Community Ambulance so that as they were putting
12 the application together, they could reflect the needs of
13 a customer in the Arizona market that were not being met.
14 Q. When -- when did you become one of the board of
15 managers -- one of the managers on the board of managers?
16 A. That was -- that would have been March of 2017, I
17 believe.
18 Q. Okay.
19 MR. MURPHY: Your Honor, could we have
20 CA-13, please? If we could go to Section V.
21 BY MR. MURPHY:
22 Q. In your capacity, Mr. O'Malley, as one of the
23 board managers, you recognize this as the operating
24 agreement with Community Ambulance?
25 A. Yes.

1 Q. Section V is the Purpose and Operations of the
2 Company. And I'd ask that you tell us -- or, tell the
3 judge, please, what -- how Dignity's values and missions
4 that Linda Hunt spoke about yesterday are built into this
5 operating agreement.
6 A. Yeah. On a number of different levels, I think
7 you see -- You know, if I look at 5.2, Operating
8 Covenants, the first line talks about "The Company" -- and
9 the company which is Community Ambulance -- "and the
10 Ambulance Service shall at all times be operated and
11 managed in a manner that furthers the existing charitable,
12 religious, and community-based healthcare purposes,
13 mission, vision and values of CHW" -- CHW is Catholic
14 Healthcare West, which is renamed Dignity Health -- "by
15 promoting health and providing or expanding access to
16 healthcare services for a broad cross section of the
17 community."
18 So it's -- it's clearly embedded into the
19 document.
20 In 5.2.1, we talk about really nothing that
21 we do in the company, in the Community Ambulance
22 organization, can violate Dignity Health's tax-exempt
23 purposes. So it allows us to continue to serve in that
24 nonprofit mode as well.
25 Q. What are some of the things -- what are some of

1 the obligations that Community Ambulance -- what sorts of
2 things does Community Ambulance have to do so that Dignity
3 Health can continue to comply with its nonprofit status?
4 A. Well, there's -- and there's other language in
5 the agreement that talks about they will have charity care
6 policies, financial assistance policies that are reviewed
7 by and supported by Dignity Health. They have a
8 compliance program that Dignity Health approves that is
9 implemented in -- within the partnership. They have
10 attached as an exhibit the Statement of Common Values
11 which embodies the core values of Dignity Health in this
12 document. It's attached to the core operating agreement
13 of the organization.
14 So what do we do? Not only do we have
15 members placed on the board of managers that are providing
16 that ultimate oversight and have that organizational
17 responsibility, the fiduciary responsibility as well -- we
18 have board members, and then we also have the ability to
19 do annual audits. We provide -- We do internal audits.
20 Dignity Health brings the company in -- formerly called
21 Chan; I believe it's now called Crowe Horwath, independent
22 firm that comes in and audits their compliance to the
23 operating agreement, to these policies and procedures that
24 we've set up, that we've agreed to. So we -- we do those
25 internalized. We have the right to call an external

1 audit, you know, if we want. We provide -- We'll do an
2 external audit of the organization.
3 So, you know, it's -- it's -- it is infused
4 throughout this agreement, the -- the integration and the
5 alignment between the two parties to form a new company
6 that effectively is an extension of Dignity Health's
7 mission. And then we have not only the oversight
8 responsibility at the board, but we bring in outside third
9 parties to continue to check, monitor their compliance
10 with those obligations.
11 Q. So if you could tell -- tell the judge how this
12 is different than a vendor contract or an ambulance
13 services agreement with a company that Dignity Health
14 doesn't have an ownership interest in.
15 A. Well, and that's -- You know, there is no
16 ownership interest in a vendor contract. There is no
17 fiduciary responsibility. There is nobody sitting at the
18 board overseeing the decisions that we're involved in in a
19 vendor contract. Only in a partnership kind of a
20 situation like this do you see that level of oversight and
21 control and influence and ability to develop and direct
22 policy, procedure.
23 And transparency? You know, I've been on
24 the board, I think, like I said, since March of 2017. If
25 I asked Rob or Brian and I say, "Hey, can I get a report

1 that gives me patient satisfaction scores for the last,
2 you know, six months?" I get it. I mean, it's complete
3 and absolute trans- -- transparency to the board of
4 directors.
5 You know, the -- the strategic planning
6 process, the annual operating budget process, as a board,
7 as a majority partner in this relationship, we have the
8 ability to approve and -- and support that level of
9 decision-making.
10 I mean, it's -- it's -- you know, it's -- I
11 think it's that -- that organizational control. It's the
12 ability to help lead this organization. It's different.
13 A vendor contract -- in a vendor contract, you have a
14 problem, you go somewhere else, right? If the parties
15 can't come together -- Typically, vendors are not going
16 to say, "Yeah, sure, we'll give you fiduciary
17 responsibilities for our agreement -- for our company at
18 the highest level of operations. Oh, we'll -- we'll let
19 you help us with our budgets. We'll -- we'll let you
20 develop our financial assistance and charity care policies
21 and improve our compliance program." It doesn't happen.
22 That level of connectivity has not happened. I do not see
23 it in the Arizona market, and it has not occurred, to my
24 knowledge.
25 Q. Let's turn to the other intervenors, the

1 intervenors other than AMR. Let's talk a little bit about
2 ABC Ambulance that currently has a CON that covers most of
3 Maricopa County.
4 Would -- would Dignity Health be willing to
5 use ABC as a preferred provider?
6 A. So, as a -- as a general statement, I would say
7 we have had conversations with every CON provider and --
8 that can serve a majority of Maricopa County. Not every
9 CON provider has that ability to do that. So we've had
10 conversations with every single intervenor in the room
11 here today, with the exception of DHS, about what we could
12 do together. Every single one that's in the room today.
13 And in some cases, the people that I actually had those
14 conversations with are in the room today. So we've had
15 conversations around how we can work together.
16 With ABC, we had reached out -- Neal had
17 reached out a couple of times.
18 Q. When --
19 A. I'm sorry.
20 Q. When you say "Neal," are you referring to
21 Mr. Thomas?
22 A. Neal Thomas, yes.
23 We had reached -- Neal had reached out
24 during the RFI process in the beginning, established a
25 relationship with me, I think really was interested in

1 trying to develop a relationship. We had a few
2 conversations. Unfortunately, at that time, they did not
3 have a CON, so they were not pursued as part of that dual
4 AMR-Rural/Metro strategy.
5 And -- and then later on, we had --
6 Q. Let -- let me stop you there.
7 That's -- this -- this was before ABC had a
8 CON --
9 A. Yes.
10 Q. -- you spoke with Mr. Thomas?
11 A. Yes.
12 Q. Do you recall when that was? What month and year
13 that was?
14 A. I really don't remember. I mean, it was probably
15 in that April/May of 2015 time frame.
16 Q. At the time Mr. -- I think you testified
17 yesterday Mr. Thomas owned ComTrans?
18 A. Yes.
19 Q. Okay.
20 A. That was -- The RFI recipient was ComTrans.
21 Q. And so you had a subsequent meeting with
22 Mr. Thomas. And when was that subsequent meeting?
23 A. So the next meeting that we had -- we had reached
24 out -- So let me define "we." Myself, Rob Richardson,
25 and Charlie Smith of EMS Advisors had reached out to Neal

1 to sit down and have lunch. I think this was probably in
2 that March of 2017 time frame. We met at Durant's. We
3 had the intent of trying to figure out what we could
4 potentially do together in the market. It was an open --
5 Q. When you say "what we could potentially do
6 together in the market," who is -- who do you mean by
7 "we"?
8 A. Community Ambulance.
9 You know, it's my role as entering the board
10 in that March time line -- Community Ambulance was looking
11 at -- and I had -- had that ability to wear dual hats, you
12 know, so I'm a Dignity Health employee for Arizona; I'm
13 also a Community Ambulance board member. But -- so I can
14 represent the needs in the Arizona market. And our
15 interest was finding out what we could do to work with ABC
16 Ambulance to build a better system of care.
17 I -- I think -- You know, what you've heard
18 me talk a lot about is partnerships. That is only one arm
19 of Dignity Health. We have a lot of collaborations and a
20 lot of strategic affiliations, especially in the Arizona
21 market. And we wanted to see what we could do to work
22 together.
23 Rob Richardson had shared this concept of,
24 you know, if -- if there was a better way for ambulance
25 companies -- Community Ambulance, who was intending on

1 receiving a CON, could work more collaboratively with the
2 existing CON holders, don't we all win? If we could
3 develop a network, a safety net, if you will, of ambulance
4 services where it is focused on elevating performance
5 levels, that seems like a great idea.
6 We had heard of Mr. Thomas's expertise in
7 behavioral transports. We were very interested in that as
8 a unique solution that maybe he could bring. We even
9 talked about that as part of that network. I think there
10 was some confusion as we were having this conversation,
11 that Mr. Thomas was a little confused with what we were
12 trying to do and how we were trying to develop those
13 collaborative relationships.
14 Q. Why do you think that he was confused?
15 A. Well, I just -- It didn't seem like there was a
16 lot of interest. It didn't seem like, "Okay. I'm not
17 really getting a lot of business from Dignity Health
18 today. It seems like we could work together. Why not try
19 and work on something?"
20 So I feel -- And -- and maybe I said
21 something that was confusing. I have no idea. I don't
22 know why. But it just didn't feel like we were getting
23 any traction in developing some type of an alliance and
24 collaborative model. And one of the things we talked
25 about was how we want to elevate and improve ambulance

1 response times. And this was a little unsettling, but at
2 this point Mr. Thomas -- I remember vividly him saying,
3 "Hospitals are spoiled. They need to take what they get."
4 And I thought, "Whoa. That's -- We're on
5 the wrong page. We are on the wrong page." That -- that,
6 to me, is not what I'm trying to do. I'm trying to
7 improve the delivery -- the transportation and transport
8 process for ambulances.
9 So right then and there, because we weren't
10 able to come to some general idea of what a vision might
11 look like of us working together, even though he has
12 expertise, at that point in time, that comment coupled
13 with the nature of the conversation, there was really
14 nowhere else to go, and there was really no other
15 conversations. Now, I would say that was 2017. That was
16 March.
17 Things change. People change.
18 Organizations can change. So that doesn't mean that I
19 wouldn't sit down with Neal today and say, "Let's -- let's
20 figure something out. What are you doing that's -- that's
21 adding value to our patients? What can it do -- What can
22 you do to continue to add value? And let's figure out how
23 to develop some type of a service agreement."
24 But at the fundamental partnership level,
25 how we were looking for alignment, integration, our

1 objective to improve transportation services, at that time
2 there was no -- there was really no next step.
3 Q. So if Community Ambulance were awarded a CON, you
4 would be comfortable approaching ABC Ambulance about or
5 have Community Ambulance approach ABC about a backup
6 agreement? Is that what you're suggesting?
7 A. I would be very supportive of Community Ambulance
8 developing a relationship with ABC and -- and Dignity
9 Health developing a relationship, because a lot of the
10 decisions on who the ambulance company is going to be
11 comes from those facilities.
12 Q. Let's turn to the other CON holder, Maricopa
13 Ambulance. Can you tell me the first time you had any
14 discussions with anyone from either Maricopa Ambulance or
15 Priority?
16 A. And I'm going to struggle with this a little bit.
17 So many dates, so little time. So Maricopa Ambulance --
18 I met with Priority Ambulance -- was the organization's
19 name.
20 Q. Okay. Do you know --
21 A. They had not received --
22 Q. Do you know what Priority Ambulance is?
23 A. An ambulance company that has --
24 Q. As it relates to Maricopa Ambulance. I should be
25 more specific.

1 A. Priority Ambulance -- My understanding is
2 Priority Ambulance owns Maricopa Ambulance. And Priority
3 Ambulance in this market is branded and doing business as
4 Maricopa Ambulance.
5 Q. So the first time you met with anyone from
6 Priority Ambulance --
7 A. So this was before they got their CON. I'm going
8 to struggle. I'm sorry. It's probably in the May of 2017
9 time line, 2000- --
10 Q. I think they had their CON in 2017, so . . .
11 MR. BELANGER: 2016.
12 THE WITNESS: It had to have been before --
13 it was before they had their CON, so it was probably 2016.
14 It was 2016. I'm sorry. Yeah.
15 So I believe Community Ambulance had already
16 made the decision to move forward with the application.
17 Bryan Gibson, CEO for Priority Ambulance; Glenn Leland; a
18 few other team members from Priority had come out and
19 wanted to meet with me. I met with them. I told them our
20 intent. I -- I explained that our intent is to be
21 supportive of Community Ambulance's application and -- and
22 their efforts to obtain a CON. Says, "I totally
23 understand that. I respect that." Even said, "Jeff, I --
24 we're not here to intervene. We're not going to interfere
25 with your efforts to get a CON. We just want to figure

1 out how we can work with you."
2 I said, "You know what?"
3 MR. BELANGER: Can I get foundation on
4 exactly who said that?
5 THE WITNESS: Bryan Gibson.
6 I shared that with Bryan too. We've had
7 subsequent meetings. I said, "Bryan, you're intervening,
8 my friend, and you told me you weren't going to
9 intervene."
10 So yeah. Then I said, "Basically" --
11 BY MR. MURPHY:
12 Q. Where was -- where was that meeting?
13 A. It was in my office. It was in Suite 501 at our
14 offices off of Central Avenue.
15 Q. And this was in May 2016, to the best of your
16 recollection?
17 A. Had to have been May of 2016. I know it was May.
18 It was before -- Because then at the end of the meeting,
19 I said, "Listen, Bryan, we want to work with you guys. We
20 want to figure out what you can do. Get your CON and then
21 let's come back to the table."
22 Q. Were you involved at all in the CON process for
23 Maricopa Ambulance, LLC?
24 A. Was I involved?
25 Q. Were you involved at all in the Maricopa

1 Ambulance CON process?
2 A. Yes, a little. I was -- Scott Bennett was the
3 representing counsel. Scott reached out to me and asked
4 if I would submit a letter of support for their CON.
5 Q. Did you submit a letter of support?
6 A. I did. I said, you know, I think competition
7 would be a good thing in this market. I support it.
8 Q. When was the next time you spoke to anyone from
9 Maricopa Ambulance, that you can recall?
10 A. You know, I -- I think Bryan -- and then it
11 really became Glenn Leland as the primary contact with
12 Priority Ambulance. They stayed in touch periodically
13 wanting to come back to the -- the table to figure out
14 after they got their CON. So probably later that fall of
15 2016, we continued to have conversations around how we
16 could work together, what we could do.
17 At that time I had a preferred relationship
18 with AMR, so I explained that to them, and I said, you
19 know, "They were here. We developed the agreement with
20 them. We're honoring the agreement with them. The
21 preferred agreement says we're going to be sending most of
22 our -- our transports over to AMR." So -- so we continued
23 to just talk. They respected the fact that I had that
24 relationship.
25 Q. Was this -- How did you talk? By phone? By

1 email?
2 A. It was both. We had some in-person meetings. We
3 had phone calls, both.
4 MR. MURPHY: Your Honor, could we call up
5 CA-193? But I want to be sure that we have the right
6 exhibit. It should say "revised." If not, we may need to
7 refresh your --
8 ALJ EIGENHEER: It is. That's the one I was
9 dealing with this morning.
10 Did you wish to offer CA-13?
11 MR. MURPHY: I'm sorry. I thought -- CA-13
12 wasn't in the record yet?
13 ALJ EIGENHEER: It's not.
14 MR. MURPHY: Yes, please. Thank you, Your
15 Honor.
16 ALJ EIGENHEER: Any objections?
17 MR. BELANGER: No, Your Honor.
18 ALJ EIGENHEER: CA-13 is admitted.
19 MR. MURPHY: Thank you.
20 CA-193.
21 MR. BELANGER: I'm not able to call it up.
22 ALJ EIGENHEER: We just fixed it before --
23 You might need to refresh. We fixed it right before we
24 came in. That's why I was a little bit late.
25 MR. BELANGER: There we go. Okay.

1 BY MR. MURPHY:
2 Q. Mr. O'Malley, can you tell me if this is one of
3 the emails which you received from a representative of
4 Maricopa Ambulance?
5 A. Yes. This is an email from Glenn Leland.
6 Q. And can you tell us when and what day you
7 received that email?
8 A. It's addressed to me and copied to Rob
9 Richardson. The date is July 26, 2017.
10 MR. MURPHY: Move to admit CA-193.
11 ALJ EIGENHEER: Any objections?
12 MR. MURPHY: You know, we can go through it.
13 There's more. I'm sorry. That's right. We'll go through
14 the rest of it. We -- just so we can get it into the --
15 into evidence. And then this is all in one exhibit, so
16 we'll go through.
17 If you go up, Your Honor, to the top of that
18 page. Thank you, sorry. There you go.
19 BY MR. MURPHY:
20 Q. Can you tell me what this email is, Jeff?
21 A. Subsequent to the email we just saw, this is a
22 January 24, 2018, email from Glenn Leland to myself.
23 MR. MURPHY: And if we can go down again.
24 I'm just going to -- Oh, yeah.
25

1 BY MR. MURPHY:
2 Q. So this is a subsequent email from Mr. Leland.
3 What day is that?
4 A. That's January 24, 2018.
5 Q. And it's to you?
6 A. Yes.
7 Q. And you received it?
8 A. Yes.
9 MR. MURPHY: And if we can go down --
10 MR. BELANGER: Well, I understand that these
11 are all emails between Mr. O'Malley and Mr. Leland. I
12 mean, he's going to be able to lay the foundation, so I'm
13 not going to object, Your Honor. I'm familiar with the
14 email. I don't know that there's anything in here that's
15 not -- Mr. O'Malley's not a party to.
16 MR. MURPHY: No, there is not anything that
17 he is not a party to.
18 ALJ EIGENHEER: Okay. Any objections?
19 MR. BELANGER: No, Your Honor.
20 ALJ EIGENHEER: Okay. CA-193, as revised,
21 is admitted.
22 MR. MURPHY: Okay. If we could go to the
23 top again. I'm sorry. Thank you.
24 BY MR. MURPHY:
25 Q. All right. This July 26, 2017, email, what was

1 the nature of the email communication you were having with
2 Mr. Leland?
3 A. So Mr. Leland reached out in an attempt to try
4 and develop some type of working relationship with Dignity
5 Health. He references the fact that he's been monitoring
6 our CON application process. A critical event that
7 occurred at this time, a couple weeks before this email,
8 was AMR attempted to terminate their agreement with
9 Dignity Health. So knowing that, I had shared with
10 Maricopa Ambulance in the past that we have a preferred
11 provider agreement, and now that that agreement was
12 attempting to be terminated by AMR, they wanted to reach
13 out and see if they could develop a short-term
14 relationship with Dignity Health up until the point that
15 we get our own CON.
16 MR. MURPHY: If we could move down.
17 BY MR. MURPHY:
18 Q. How did Mr. Leland propose to immediately -- to
19 take on Dignity Health's needs?
20 A. The initial proposal here was to begin serving
21 all of Dignity Health's needs, immediately expand
22 capacity, and it would make our hospitals a priority.
23 They have some lower-use clients. They say
24 infrequent-use clients -- for me, a client is a patient --
25 that they would refer to other providers. So when I read

1 that, I thought, "You mean you're going to stop providing
2 services to somebody else that needs your services to take
3 care of us?" That, to me, does not align with our
4 mission. That's -- that's troubling. And it's telling me
5 that I'm basically asking him to stop serving somebody and
6 start serving us. And I was not -- I was not comfortable
7 when I read that.
8 MR. MURPHY: If we could move down a little
9 bit, Your Honor, to -- I think it's -- Dignity produced
10 these documents -- 111 and 11- -- Yeah, perfect. Let's
11 go up a little bit and down so we can see the date.
12 Sorry. There we go.
13 BY MR. MURPHY:
14 Q. This January 24, 2018, email from Glenn Leland to
15 you, Mr. O'Malley, what is the nature of this
16 communication, if you recall?
17 A. This was reflective of a conversation between me
18 and Mr. Leland about establishing an ambulance services
19 agreement between our organizations. My -- my intent was
20 to have performance standards built into the -- the
21 agreement. I asked for performance standards. I think
22 the preference from Priority Ambulance was to come in
23 immediately and just take over all of our transports. And
24 we had a few phone conversations, and I said, "Listen, to
25 do that, you would have to bring in more ambulances."

1 He said, "Yeah, we can bring in more
2 ambulances."
3 I said, "Then what happens when we get our
4 CON? You know, what are you going to do with those
5 ambulances?"
6 And, you know, so we talked through it and
7 we decided, you know, it probably makes more -- more
8 sense, instead of them ramping up and then having excess
9 capacity, just work with us on a backup type of an
10 agreement. Even though we didn't have a preferred
11 agreement with anybody else at the time, this served as
12 the foundation of -- of just a general services contract
13 between us.
14 Q. Did you at this time have any understanding that
15 Maricopa Ambulance's CON includes interfacility transport
16 response or arrival time standards?
17 A. Yeah, yes.
18 Q. Okay. So in terms of the backup agreement, this
19 is what the nature of the communication was discussing, a
20 potential backup agreement?
21 A. It was trying to get performance standards. The
22 initial proposed agreement from Maricopa Ambulance didn't
23 have performance times in it, and so I said, "I need to
24 have performance times built into the agreement." And
25 then I got this email that says, "The CON does not have

1 performance standards. But if you want something
2 specific, let's discuss."
3 Q. Correct the record.
4 MR. BELANGER: I'm sorry.
5 BY MR. MURPHY:
6 Q. Does have.
7 A. Oh, does. I'm sorry. I'm sorry. I misread
8 that.
9 Because I just said I knew that they had CON
10 standards. "The CON does have performance standards. But
11 if you want something specific, let's discuss. As the
12 backup provider, it's pretty easy to hit a response time
13 standard because we just decline anything we can't fit in
14 to match."
15 Q. What was your reaction to that?
16 A. That doesn't -- that doesn't really help. I need
17 somebody who's going to be there, who's going to commit.
18 A backup provider needs to be someone you can depend on.
19 And I'm basically reading "We're only going to be there
20 when we know we can meet that agreement term."
21 Q. Except yesterday, we learned during testimony
22 that Dignity Health has signed an agreement with Maricopa
23 Ambulance for ambulance services, correct?
24 A. Yes.
25 Q. So why -- why did you sign an agreement with

1 Maricopa Ambulance?
2 A. I don't have an agreement with an ambulance
3 provider. I needed an agreement with an ambulance
4 provider. While we don't do a lot of transports where
5 Dignity Health is the financially responsible party, it
6 was important to try to get that 30 percent discount just
7 in case. It was important to start getting reporting.
8 So, you know, this is -- this is a little bit of a, you
9 know, time loop that we're going in because not doing the
10 exact same thing. I don't have data. I need reports.
11 You're agreeing to provide reports. You're going to agree
12 to meet with me and talk about how we're going to improve
13 the quality of care. You're going to agree to performance
14 standards. Those were the kinds of things that I needed
15 in place with somebody -- with somebody.
16 Q. So at this time, who is Dignity Health using for
17 interfacility transports, to the best of your knowledge?
18 A. We're using Maricopa Ambulance. We're using AMR.
19 We just -- We don't have a choice.
20 Q. Why -- why do you continue to use AMR?
21 A. There's -- In -- in certain parts of town --
22 Maricopa Ambulance is pretty strong in the West Valley.
23 They have a lot more presence there. But in the East
24 Valley, they're not quite as strong. You know, I've heard
25 a lot of complaints coming out of our East Valley teams

1 within Dignity Health saying, "I -- I would call Maricopa
2 Ambulance, but I -- they're not here. And I need to get
3 somebody now." The only option of who can respond is AMR.
4 Q. The new facilities that -- that are going to be
5 opening in the east and southeast Valley, at this point in
6 time, do you know who's going to cover those ambulance
7 transports?
8 A. I have no idea. I mean, I guess -- I guess I
9 would say that it's going to have to be AMR in the East
10 Valley, because they're there, and then Maricopa
11 Ambulance, and hopefully they'll continue to expand.
12 Q. Would -- would you have this issue with Community
13 Ambulance?
14 A. No.
15 Q. Why?
16 A. Because it's different when you can sit down with
17 a partner; you can say, "Hey, Rob, I have a 50-bed
18 hospital opening November 19th of 2018," and we're six
19 months in advance.
20 And he says, "Great, let's figure out how to
21 build that into our dispatch program, how we're going to
22 ramp up the ambulances."
23 They will be there. They will commit to
24 providing those services. It's going to be independent of
25 the volume of services that we're receiving -- you know,

1 that they're going to get out of those transports. So if
2 I tell them, "You're only going to get five transports a
3 day," I'm not going to hear, "Oh, well, that's not good
4 enough. I'm not going to put an ambulance there." I know
5 they're going to be there, and that's the difference.
6 MR. MURPHY: Thank you, Jeff.
7 No more questions, Your Honor.
8 ALJ EIGENHEER: All right. Cross?
9
10 CROSS-EXAMINATION
11 BY MR. McGOLDRICK:
12 Q. Mr. O'Malley, my understanding is that right now,
13 all of the transport needs of the Dignity facilities are
14 being served by either Maricopa Ambulance or AMR, correct?
15 A. Define "needs."
16 Q. I'm just saying your people -- Don't shake your
17 head at me.
18 All of the transports to and from Dignity
19 facilities are being handled by either Maricopa Ambulance
20 or AMR, correct?
21 A. Those companies are providing the ambulances to
22 move those patients.
23 Q. Now, are you here today, Mr. O'Malley, as a
24 representative of RBR?
25 A. No.

1 Q. But you're on RBR's board?
2 A. Uh-huh.
3 Q. Is that yes?
4 A. Yes. Sorry.
5 Q. And you told us you -- you joined the RBR board
6 when?
7 A. March of 2017.
8 Q. And is there any documentation to indicate that
9 you were selected or nominated and joined the board?
10 A. There should be a motion in the minutes of the
11 board.
12 Q. So today, you're here as a representative of
13 Dignity Health. Is that right?
14 A. Yes.
15 Q. And from prior testimony, you indicated that
16 Dignity and RBR are very much distinct and separate legal
17 entities, correct?
18 A. Correct.
19 Q. Dignity Health owns 50.1 percent of RBR, correct?
20 A. Yes, sir.
21 Q. As a nonprofit, correct?
22 A. Dignity's a nonprofit, yes, sir.
23 Q. Right.
24 And then the other owner is who?
25 A. AMG.

1 Q. And they are a for-profit entity, correct?
2 A. Yes, sir.
3 Q. And so you've got a nonprofit and a for-profit
4 that joined to form a company, correct?
5 A. Yes, sir.
6 Q. The operating agreement that was on the screen
7 earlier, that was entered into before you were on the
8 board, correct?
9 A. Yes, sir.
10 Q. 2010 document?
11 A. Uh-huh. Yes.
12 Q. And was that a document that came into existence
13 before you ever even heard of RBR?
14 A. Yes, sir.
15 Q. And that document has not been amended, correct?
16 A. That -- that is correct.
17 Q. So the purpose -- the stated purpose that you
18 showed the judge earlier, that is the purpose today,
19 correct?
20 A. Correct.
21 Q. And that indicates that its purpose is to
22 primarily serve Nevada, correct?
23 A. That is correct.
24 Q. Do you interpret that the purpose -- So the
25 purpose of the company is to develop, own, and operate the

1 ambulance service located in and around Henderson, Nevada,
2 which shall provide an alternative medical transportation
3 option to the service area of the greater Las Vegas area.
4 A. Yes, sir.
5 Q. Then do you take that next sentence to have a
6 purpose here in Arizona?
7 A. No, sir.
8 Q. So right now, the sole purpose is to provide the
9 services in Nevada?
10 A. Yes, sir.
11 Q. And that's the operating agreement -- sometimes
12 called the joint venture agreement -- that the Department
13 of Health Services wanted when it was reviewing the
14 application, correct?
15 A. I'm sorry. I didn't hear that whole question.
16 Q. You've been involved with the application
17 process, correct?
18 A. Yes.
19 Q. And at one point in time, the Department of
20 Health Services wanted a copy of the joint venture
21 agreement between Dignity and its partner?
22 A. Yes. Yes, sir.
23 Q. And this is the document, sir, that was provided
24 to the Department of Health Services?
25 A. I believe so.

1 Q. And so just so I'm clear, the -- the operating
2 agreement/joint venture agreement that is the subject of
3 this particular application is this 2010 document that has
4 its stated purpose of providing services in Henderson,
5 Nevada?
6 A. Yes, sir.
7 Q. And I think we heard -- Well, it was established
8 yesterday that the -- there was no CON process in Nevada,
9 correct?
10 A. That's my understanding.
11 Q. Your understanding -- Well, you're on the board
12 of an ambulance company in Nevada, correct?
13 A. Yes, sir.
14 Q. It's what we call a franchise system as opposed
15 to a CON system, to your knowledge?
16 A. Yes.
17 Q. To your knowledge, completely different
18 regulatory processes?
19 A. Yes, sir.
20 Q. And in Nevada, RBR does 911 and interfacility
21 transports, correct?
22 A. Yes, sir.
23 Q. Your application for -- for the judge today is
24 solely for interfacility transports, correct?
25 A. Yes, sir.

1 Q. And you were here yesterday when Ms. Hunt was
2 testifying?
3 A. Yes.
4 Q. Is she your boss?
5 A. I have a dual-matrix reporting relationship. I
6 direct-line report to Peggy Sanborn, corporate strategic
7 growth, M&A. And then I have a dotted line to Linda Hunt
8 in the Arizona market.
9 Q. Would it be fair to say that you have -- if you
10 wanted to gain the access, could communicate with
11 Ms. Hunt?
12 A. Yes.
13 Q. Do you disagree with any of the testimony she
14 gave yesterday?
15 A. I really need to review that testimony. I'm
16 sorry.
17 Q. But you listened to it, correct?
18 A. Yeah. Generally speaking, I listened. Yeah, I
19 mean, I heard everything she said. I'm just so focused on
20 where I'm at today in this hearing, I'm -- I'm really not
21 even thinking about what she said yesterday.
22 Q. Did you talk to her after her testimony
23 yesterday?
24 A. Briefly, but it was more about what we were doing
25 to move forward with today, with me going on the stand

1 later.
2 Q. But do you have any reason to -- to suggest to us
3 and the judge here that we should accept all of her
4 testimony yesterday as a -- hang on -- as a representative
5 of Dignity Health?
6 A. I have no reason to not believe what Linda says.
7 Q. You -- you understand that this process -- this
8 CON process is governed by some state statutes, correct?
9 A. Yes, sir.
10 Q. And some state regulations, correct?
11 A. Yes, sir.
12 Q. And you understand that the Department of Health
13 Services put out a guidance document, correct?
14 A. Yes.
15 Q. You understand the guidance document is a
16 governmental document that is -- was published to educate
17 all of us here today as to what the Department expects in
18 a CON application process and hearing, right?
19 A. Yes, sir. Yes, sir.
20 Q. And have you read that document, by chance?
21 A. I've read most of it, yes.
22 Q. Now, what has been your involvement,
23 Mr. O'Malley, with respect to the application process
24 itself? Do you have any involvement in selecting DHS
25 advisers to assist in preparing the application?

1 A. It was -- My involvement in the application
2 process was providing input into the situation in Arizona,
3 the needs, the opportunities, and explaining the landscape
4 of providers, what I knew about ambulance transportation
5 systems, the networks, the owners, the companies. So I
6 was trying to inform Community Ambulance in the
7 preparation of that document, comma --
8 Second part of your question was about EMS
9 Advisors. I was made aware of EMS Advisors through one of
10 our hospital CEOs who had a knowledge of Jim Hayden and --
11 and his company and suggested that I have a conversation
12 with them since I'm trying to navigate these regulatory
13 and guideline-type waters and trying to build ambulance
14 solutions. And so at some point -- and I don't remember
15 the timing of that, but I reached out to Jim. I had a
16 conversation with Mr. Hayden. And we -- He kind of
17 filled me in a little bit more about what's the history
18 been in this market.
19 I shared Jim's contact information with
20 Community Ambulance, with Mr. Richardson, and offered that
21 if he needed, from a consulting standpoint, somebody to
22 help in the process, that he may be somebody that they
23 consider. The ultimate decision was Community Ambulance's
24 decision.
25 Q. So Community Ambulance hired an outside

1 consultant, correct?
2 A. Correct.
3 Q. And -- You're doing fine.
4 A. I'm sorry.
5 Q. That consultant -- To your knowledge, did that
6 consultant team -- is that the team that prepared the
7 application?
8 A. I -- I believe it was -- My understanding was
9 that it was an iterative process, where a draft was
10 prepared. I believe the initial draft was probably from
11 EMS Advisors. And then it went to Community Ambulance for
12 review and edits and things like that.
13 Q. Did -- did you approve the application before it
14 was submitted to the Department of Health Services?
15 A. I saw it. I saw a hard copy of the application.
16 I read it. I didn't have any other suggestions or
17 changes.
18 Q. So did you have edit capacity? So, for instance,
19 if you felt that there was something in the application
20 that Dignity disagreed with or that you disagreed with,
21 did you think you had the -- the authority to edit
22 anything in the application?
23 A. I -- I believe if I had information that was
24 contrary to the application, they would have included that
25 information.

1 Q. With respect to the Dignity organization, were
2 you the primary -- or, are you the primary decision-maker
3 at Dignity with respect to input in the application?
4 A. Yes.
5 MR. McGOLDRICK: If we could go, Judge, to
6 the guidance document, which is -- it's ADHS-15, Your
7 Honor.
8 BY MR. McGOLDRICK:
9 Q. Mr. O'Malley, I asked you earlier about the
10 guidance document. I've got some questions about it. But
11 this is in a format in which you have seen it before,
12 correct?
13 A. Yes, sir, it looks familiar.
14 MR. McGOLDRICK: Judge, if we could go to
15 page 2 of 5, please.
16 BY MR. McGOLDRICK:
17 Q. Mr. O'Malley, do you see in bold the term "Needs
18 assessment"?
19 A. Yes, sir.
20 Q. The document says the "'Needs assessment' means a
21 study or statistical analysis that examines the need for
22 ground ambulance service within a service area or proposed
23 service area that takes into account the current or
24 proposed service area's medical, fire, and police
25 services." Do you see that?

1 A. Yes, sir.
2 Q. Did RBR, Dignity, or Community Ambulance -- did
3 anybody involved in this application prepare a written
4 needs assessment and submit it to the Department of Health
5 Services?
6 A. No, sir.
7 Q. Then there's the term "Public necessity" right
8 underneath there. Do you see that?
9 A. Yes.
10 Q. "'Public necessity' means an identified
11 population needs or requires all or part of the services
12 of a ground ambulance service." Do you see that?
13 A. Yes.
14 Q. And my understanding is the identified population
15 is Dignity patients.
16 A. That's my concern.
17 Q. That's the focus of your application, correct?
18 MR. MURPHY: Objection, Your Honor.
19 Misstates his prior testimony. It's not his application.
20 We need clarification on that.
21 BY MR. McGOLDRICK:
22 Q. How about the application?
23 A. The application serves to serve Dignity Health
24 needs primarily.
25 Q. When we look at public necessity in this

1 statement, isn't it true, sir, the identified
2 population --
3 THE COURT REPORTER: I'm sorry?
4 BY MR. McGOLDRICK:
5 Q. Isn't it, sir, true the identified population
6 with respect to the application is Dignity patients?
7 A. The 11,315 that's included in the application are
8 Dignity Health patients.
9 Q. And that number which you just mentioned, that is
10 the number of proposed transports for the first year of
11 service, correct?
12 A. Yes, sir.
13 MR. McGOLDRICK: Your Honor, if we could go
14 to the next page, page 3.
15 BY MR. McGOLDRICK:
16 Q. Mr. O'Malley, this -- this page discusses certain
17 regulations that apply to this -- this process. What I'd
18 like to do is focus on B. B indicates that "In deciding
19 whether to issue a certificate of necessity to more than
20 one ground ambulance service for convalescent or
21 in-facility -- interfacility transport for the same
22 service area or overlapping service areas, the Director
23 shall consider the following."
24 So -- so what I want to make sure is you
25 understand this is an application for ground ambulance

1 service, correct?
2 A. Yes, sir.
3 Q. It is for convalescent and interfacility,
4 correct?
5 A. Yes, sir.
6 Q. In your mind, what is the difference between
7 those two?
8 A. I see convalescent as a step down below ALS and
9 BLS level of ambulance service.
10 Q. And then it says in "the same service area or
11 overlapping service areas."
12 So you understand that the application, if
13 granted, would overlap a number of CON holders' service
14 areas, correct?
15 A. Yes, sir.
16 Q. When we look at B2, one of the -- one of the
17 deciding factors or issues from the Department to consider
18 is the financial impact on certificate holders, correct?
19 A. Yes, sir.
20 Q. And would you agree with me, sir, that there
21 would, in fact, be a financial adverse impact to the
22 existing CON holders if that community loses 11,000-plus
23 transports in the first year?
24 A. I -- What I'm struggling with is typically when
25 you see a decrease in volumes, usually organizations

1 respond accordingly, so you kind of lower your cost
2 structure to match your revenues. I don't know if these
3 volumes that are shifting actually provided an increase in
4 their contribution margin or if it's a variable expense
5 structure that will not impact them overall. So I really
6 don't understand enough about the impact of the existing
7 CON holders to -- to say that it won't -- that it will
8 have an adverse impact. I don't know how they will
9 respond.
10 Q. So you've got an expert listed who will testify
11 on behalf of RBR, correct?
12 A. I believe Community Ambulance has an expert
13 identified.
14 Q. You understand that that expert has come to the
15 conclusion that there would be a detrimental financial
16 impact?
17 A. We would have to defer to the expert.
18 Q. Okay. So you're not here today to suggest that
19 there would not be a detrimental financial impact; you
20 just don't know, correct?
21 A. I don't know.
22 MR. MURPHY: Objection, Your Honor. This is
23 beyond the scope of his direct. He was not disclosed to
24 discuss financial impact issues. We have an expert on
25 that issue.

1 MR. McGOLDRICK: Is the objection beyond the
2 scope of direct? I've never heard that as a --
3 I thought I heard you say we could ask any
4 relevant question, Your Honor.
5 MR. MURPHY: It's irrelevant -- it's
6 irrelevant with respect to this witness.
7 ALJ EIGENHEER: Okay. Well, he's already
8 answered the question that he doesn't know, so -- But I'm
9 sure we will -- we will get to this with another witness,
10 so I don't think we need to hear much from him in that
11 respect.
12 BY MR. McGOLDRICK:
13 Q. Mr. O'Malley, did you read Community Ambulance's
14 prehearing memorandum that was filed in -- in OAH here?
15 A. Yes. Yes.
16 Q. When you -- when you reviewed the prehearing --
17 Let me ask you this. Did you review a draft
18 of the prehearing statement or memorandum before it was
19 submitted?
20 MR. MURPHY: Objection. Calling for
21 attorney-client communications, joint prosecution
22 agreement that we have with Dignity Health.
23 MR. McGOLDRICK: Can I respond to that, Your
24 Honor?
25 ALJ EIGENHEER: Sure.

1 MR. McGOLDRICK: I'm asking if he read a
2 draft of the document. It's not calling for any
3 privileged communication.
4 MS. HOFMEYR: And Mr. O'Malley --
5 MR. MURPHY: Object.
6 MS. HOFMEYR: I'm sorry. Mr. O'Malley, from
7 Dignity, is not Mr. Murphy's client.
8 MR. MURPHY: There's a joint prosecution
9 agreement between Dignity Health --
10 MS. FICKBOHM: Prosecution?
11 MR. McGOLDRICK: If there was, that wasn't
12 disclosed.
13 Do you have any comments, Jim?
14 MR. BELANGER: I would second that, A, it
15 doesn't call for any attorney-client-privileged
16 communication. He just asked if he read a draft.
17 And also, I've never seen anything on common
18 interest or joint defense agreement.
19 MR. MURPHY: It's a prosecution -- it's
20 prosecuting the application is why it's called
21 prosecution, certainly. But to the extent that this --
22 this line of questioning is going to venture into what, if
23 anything, Mr. O'Malley or anyone on the Community
24 Ambulance team told the lawyers for Community Ambulance
25 would infringe on the attorney-client communication

1 privilege and its work product if there are issues that
2 are raised, discussions that were had about that draft.
3 So --
4 ALJ EIGENHEER: Well, at this point the
5 question itself doesn't call for any of that.
6 So you may answer that question and we'll
7 see where we go.
8 THE WITNESS: I -- I believe I did. I -- I
9 think I saw a draft, and I was responding in the sense of
10 I want to make sure that the -- the focus in what was
11 being clarified in that document was representing Dignity
12 Health's needs.
13 BY MR. McGOLDRICK:
14 Q. Sir, if we go to Number 3 -- B3, one the factors
15 to consider is the need for additional convalescent or
16 interfacility transports. Do you see that?
17 A. Yes.
18 Q. Presently, do you know the expansion capability
19 of any of the existing CON holders in Maricopa County?
20 A. I believe the intervenors present in the room
21 have expressed the ability to add more ambulances, if
22 needed.
23 Q. And you know there's a number of other CON
24 holders that are not intervenors --
25 A. Yes.

1 Q. -- that provide service in Maricopa County?
2 A. Yes, sir.
3 Q. Do you have any information that any of these
4 other CON providers don't have additional capability to
5 serve the public in Maricopa County?
6 A. I don't have any information on that.
7 Q. Again, I think we established earlier on in my
8 questioning to you, presently all of the patients in
9 Dignity facilities or in any Dignity hospital are being
10 transported to and from wherever they're going by existing
11 CON holders, correct?
12 A. I believe so. Yeah.
13 Q. And when you look at B4, sir, it says, "Whether a
14 certificate holder for the service area has demonstrated
15 substandard performance." Do you see that?
16 A. Yes, sir.
17 Q. The memorandum submitted by Community Ambulance,
18 page 20, states: "Community Ambulance is not alleging
19 that the services provided by any Intervenor is
20 'substandard' as that term is defined by statute and
21 regulation." Do you agree with that statement?
22 A. I believe there's no data that we have to show
23 that there's substandard performance. It's been a
24 challenge we've had all along.
25 Q. So you don't disagree with that statement that

1 was submitted to this --
2 A. No. I don't.
3 Q. Mr. O'Malley, the application that was submitted
4 projects a little over 11,000 transports the first year.
5 A. Yes, sir.
6 Q. Do you know how that number was arrived at?
7 A. That was input in -- as the application was
8 coming together. Community Ambulance needed to have an
9 idea of the population of transports we were contemplating
10 for the need in the first year. At the time -- so this
11 was spring, summer of 2016 -- I had limited data. I used
12 some of the reports I had been getting in terms of volumes
13 and annualized them. I had no reports that gave me any
14 annual data. And I had reports from four different
15 companies that I had to put together and then annualize
16 and estimate. And that's -- that's where the -- the
17 number came from.
18 Q. When Ms. Hunt was here yesterday, she talked
19 about transportation logs. Do you know what she was
20 talking -- referring to?
21 A. Yeah, different parts of the organization have
22 transportation logs. So Becky Haas, for example, with
23 Maricopa urgent care, is a great example of that. She has
24 some logs where she is manually trying to track the
25 information around these transports.

1 Arizona General Hospital, I believe, had
2 some -- some logs. I'm not very familiar with those logs.
3 But I do believe they had logs as well.
4 In my process, it's one of the things I'm
5 trying to get -- that information and that data. I asked
6 people on that original committee I referenced, the
7 individual leads within the organization that are
8 requesting ambulances -- I said, "Can you please start
9 tracking this?"
10 Everybody said, "Yeah, yeah. Sure.
11 Absolutely."
12 It's not part of their job, so --
13 Q. Let me make sure I understand.
14 A. Yeah.
15 Q. Is there not a uniform system in --
16 A. No.
17 Q. Is there not a uniform system in the Maricopa
18 County -- Maricopa County Dignity silo that tracks
19 transportation in and out of your facilities?
20 A. Not via ambulance.
21 Q. So would it be fair to say that Dignity, despite
22 its transportation needs, relies on providers to track
23 your ambulance transports in and out of your facilities?
24 A. They're the only ones that have all the data,
25 yes.

1 Q. Do you believe that if Dignity wanted to track
2 ambulance transports in and out -- in and out of its
3 facilities, that it could do so?
4 A. It would be incomplete.
5 Q. Hypothetically, if I went to a patient's medical
6 records --
7 A. Yes.
8 Q. -- does your facility chart whether or not the
9 patient leaves the facility via ambulance or with a family
10 member, calls a cab?
11 A. I -- I don't know what's in our electronic
12 medical record, sir. I'm sorry.
13 Q. So as we sit here today, is it your testimony,
14 sir, that you do not know if Dignity facilities chart in
15 the patient's medical records how they leave the facility?
16 A. I know the discharge disposition and status of
17 the patient are in there. I do not know the mode of
18 transportation; that is correct.
19 Q. If you don't know the mode of transportation, you
20 wouldn't, then, have data that would say the person in
21 charge of discharge called Maricopa Ambulance or called
22 AMR Ambulance or called a cab, correct?
23 A. Correct.
24 If I might add, if that information is in
25 the electronic medical record, it's probably in a

1 free-form field. We have -- I have met with the IT teams
2 to try and pull information out. I have met with our case
3 management teams to try and get information and data. And
4 based on their knowledge -- and they're much closer to
5 those systems and the data sets that are available -- they
6 were not able to generate any kind of reports that would
7 be helpful.
8 Q. So just so I'm clear, the projected transports
9 for the first year, the 11,000 and some change --
10 A. Yes, sir.
11 Q. -- is that based upon the number of transports
12 you believe that AMR did the year prior to the application
13 being submitted?
14 A. It was an estimate of one-quarter of data that we
15 had received from AMR, some of it in a report from AMR,
16 some of it in multiple spreadsheets from their other
17 organizations that they had acquired. And I took that
18 quarterly data and projected that for the next year. I
19 took that quarter of data times four.
20 Q. So -- so as I understand it, you are the person
21 who estimated the number of transports that would be done
22 in the first 12 months?
23 A. Yes, sir.
24 Q. And what you didn't do is rely on the expertise
25 of Mr. Richardson and Mr. Hayden and Mr. Smith who

1 actually worked in the industry, correct?
2 A. I didn't believe they had the data.
3 Q. Okay. You understand --
4 MR. McGOLDRICK: Judge, if you could go --
5 Scroll down. Correct. Right there.
6 BY MR. McGOLDRICK:
7 Q. Page 4 of the guidance document talks about
8 interfacility arrival times. Do you see that?
9 A. Yes, sir.
10 Q. Isn't it true, sir, that in a CON application, an
11 applicant can apply for or commit to interfacility arrival
12 times?
13 A. Yes.
14 Q. And the application, as submitted, that we're
15 here to talk about today, did not include any
16 interfacili -- interfacility arrival times, correct?
17 MR. MURPHY: Objection, Your Honor. My
18 understanding is that the guidance document with these
19 arrival times standards came out after the application was
20 filed, because the application was filed in June of 2016.
21 Isn't this 2017 when this was -- January 2017 --
22 MR. McGOLDRICK: It was revised.
23 MR. MURPHY: Do we have a version of the
24 document from before the application?
25 MR. McGOLDRICK: Well --

1 MR. MURPHY: You can't rely on this document
2 to determine whether or not they knew of arrival times in
3 the CON application, so . . .
4 MR. McGOLDRICK: Can I respond?
5 ALJ EIGENHEER: Do you have an earlier
6 version? Go ahead.
7 MR. McGOLDRICK: Judge, I can certainly
8 produce an earlier version. It's not with me today. But
9 this document has been around since it came out right
10 before the Yuma hearings four or five years ago.
11 But -- but I'll start over.
12 MR. MURPHY: But I'm -- but I'm not -- I'm
13 not disputing that this document has existed. But my
14 concern with the question is whether or not applicants
15 wishing to provide interfacility transport times -- This
16 Section 5 with these definitions of urgent and non-urgent
17 transfers was in a document prior to July 10, 2016.
18 That's all I'm asking, and I would like to use that
19 document. Then I don't have an objection after that.
20 MR. McGOLDRICK: I'll start over.
21 BY MR. McGOLDRICK:
22 Q. Mr. O'Malley, how many times has the applicant
23 amended its application since its initial filing?
24 A. I believe there's -- I don't know. I thought
25 there was one amended application, but I can't remember

1 for certain.
2 Q. Isn't it true, sir, the application could have
3 been amended at any time up until the hearing to include
4 interfacility arrival times?
5 A. I -- I honestly don't know what the amendment
6 process is.
7 Q. But you do know your application has been
8 amended --
9 A. I believe --
10 Q. -- at least once?
11 A. I believe it has.
12 Q. Maybe twice?
13 A. I don't know.
14 MR. McGOLDRICK: Judge, could you please
15 pull up ADHS-12.
16 BY MR. McGOLDRICK:
17 Q. Mr. O'Malley, have -- have you ever seen that --
18 that letter?
19 A. I'm -- I'm not remembering it. I'm just looking
20 at it right now, but I'm not recalling it.
21 THE WITNESS: Could -- could we please
22 scroll down a little bit?
23 I'm aware of these issues. I don't know if
24 I've seen this letter, but I was aware of some of the
25 changes in ARCR that were discovered later.

1 BY MR. McGOLDRICK:
2 Q. Okay. So you understood, Mr. O'Malley, that as
3 the Department reviewed the application and its
4 submissions, it had some questions and, at least with
5 respect to some financial data in the ARCRs, the
6 application was amended?
7 A. Yes, sir.
8 Q. I want to focus on the first bullet point there.
9 It says, "There are two items we need to bring up with our
10 revised ARCR." Then it says, under 1, "We believe the Bad
11 Debt will come in lower due to not being a 911 provider
12 and the clients are better known to us with better PHI
13 than a 911 transport." Do you see that?
14 A. Yes, sir.
15 Q. And as you know, you're not -- you didn't apply
16 for 911, so you don't have that cost structure built into
17 your application, correct?
18 A. I believe it -- it was -- interfacility and cost
19 structure was set appropriately.
20 Q. Yeah, but -- but you understand that to run a 911
21 service, it costs more to run an interfacility service?
22 A. I do not know that.
23 Q. Okay. You don't know if there's a readiness
24 factor that you have to have 24/7 ambulances available if
25 you're running a 911 service?

1 A. I think that makes sense. Yeah, they have to be
2 readily available.
3 Q. And this letter says "the clients are better
4 known to us." PHI is a private health insurance, correct?
5 A. Personal health insurance.
6 Q. Personal or private? Okay.
7 A. Yeah.
8 Q. And -- and that's because the people coming --
9 or, going to your facilities have been admitted. You have
10 a better handle on whether or not you're going to get paid
11 for those ambulance runs, correct?
12 A. Yes.
13 Q. With respect to a 911 patient, you have to pick
14 up the patient who needs the care regardless of whether or
15 not they have personal health insurance, correct?
16 A. Yes.
17 Q. And you understand the collection rate is
18 probably higher for people that have PHI than the 911
19 population, correct?
20 A. It makes sense. I'm not a 911 expert. I'm
21 sorry.
22 Q. But from --
23 A. I understand what you're saying. Your logic kind
24 of makes sense to me.
25 Q. Now, Mr. O'Malley, I touched on this with

1 Mr. Davis yesterday. Would you agree with me that the
2 vast majority of your patients coming into Dignity
3 facilities come by some other means than ambulance?
4 A. Yes.
5 Q. And conversely, the vast majority of people who
6 leave your facilities leave by some other mode other than
7 ambulance?
8 A. I believe so.
9 Q. And would you agree with me, Mr. O'Malley, that
10 most of the Dignity transports from your facilities are
11 prescheduled?
12 A. I don't know that.
13 Q. And if the people are leaving a Dignity facility,
14 they're already in the Dignity system. They're in a
15 Dignity facility but they're leaving, correct?
16 A. Is your question if they're leaving a Dignity
17 facility, are they in the Dignity system?
18 Q. Yes.
19 A. Yes.
20 Q. And do you know what percentage of people leave a
21 Dignity facility to go home, for instance, versus going to
22 another Dignity facility?
23 A. I believe a majority of the patients discharge to
24 go home.
25 Q. Sir, do you have any evidence that any of the CON

1 holders present in this hearing are not meeting their
2 response time requirements for their particular
3 certificates of necessity?
4 A. I have only personal testimony from people using
5 the service.
6 Q. Have you ever communicated with the Department of
7 Health Services and inquired as to whether any of these
8 intervening CON holders are out of compliance?
9 A. I did not. I didn't know that was even an
10 option.
11 Q. Have you personally ever filed a complaint with
12 the Department of Health Services about the performance
13 standards of any of the intervening CON holders?
14 A. No.
15 Q. Have you thought about cost of transport, whether
16 it's higher or lower, in rural versus metropolitan areas?
17 A. The cost of transport in rural versus?
18 Q. Metropolitan areas. Phoenix versus Wickenburg,
19 for instance.
20 A. I have not thought about that.
21 Q. Do you have a sense as to -- somebody who's
22 obviously very intelligent -- that one might cost
23 significantly more than the other?
24 A. I -- I really don't know.
25 Q. Okay. Do you know if reimbursement rates are

1 higher or lower in rural versus metropolitan areas for
2 ambulance?
3 A. I don't know.
4 Q. Do you know how many transports AMR has done for
5 Dignity patients in the last three years broken down in
6 any particular year?
7 A. I only have the information -- We reviewed some
8 reports yesterday. I testified that I have minimal
9 confidence in the accuracy of the reports. I think
10 directionally they've probably captured most of the
11 transports that they have provided for us. What I don't
12 know is how many they haven't done for us. So I think --
13 I guess I have a general idea based on those reports.
14 Q. In 2016, do you have any reason to dispute that a
15 little over 18,000 transports were done by AMR for Dignity
16 patients?
17 A. That seems like a high number.
18 Q. In 2017, a little over 18,000, do you think
19 that's an appropriate number?
20 A. Seems like a high number. I haven't seen those
21 numbers.
22 MR. McGOLDRICK: Judge, could you pull up
23 Community Ambulance Number 180?
24 BY MR. McGOLDRICK:
25 Q. Mr. O'Malley, this -- this was an exhibit

1 prepared and submitted by AMR, but it was also -- it's
2 also numbered and submitted by Community Ambulance.
3 Have you ever seen or reviewed the data
4 that's set forth on this chart?
5 A. No, sir.
6 Q. You've never studied the numbers such that you
7 can't either support them or disagree with them, correct?
8 MR. MURPHY: Your Honor, I'm going to object
9 to that question. There's no foundation for these
10 numbers. There's no backup data to support any of these
11 numbers that -- on this chart that were prepared by
12 someone, I'm assuming, from AMR.
13 MR. McGOLDRICK: Well, Judge, we'll -- we'll
14 provide the data, but it's an exhibit listed by the
15 applicant and --
16 MR. MURPHY: As a -- Sorry.
17 MR. McGOLDRICK: Thank you.
18 It's -- it's an exhibit that was exchanged.
19 It was listed by both us and the applicant. I simply want
20 to know if he can agree or disagree with the general
21 numbers there. If he can, great; if he can't, great.
22 MR. MURPHY: It -- it was listed. If you
23 hadn't used it as an exhibit or tried to admit it, we were
24 going to use it as a cross-examination document for AMR's
25 witnesses, particularly for this point. There is no data

1 to support these numbers, at least that's been disclosed.
2 So you can't rely on these numbers or -- can't rely on
3 these numbers, give them any weight unless there's backup
4 data to support them.
5 ALJ EIGENHEER: Okay. I believe the
6 question is do you have any reason to disagree with them?
7 So do you have any reason to disagree with
8 them?
9 THE WITNESS: I -- They are nowhere near
10 the numbers that we were receiving in our ongoing reports.
11 So I would have to say because the total number is so
12 different, that, to me, does not seem like these are real
13 numbers.
14 BY MR. McGOLDRICK:
15 Q. So just to summarize that, Mr. O'Malley, you
16 don't have confidence, based upon your knowledge, that the
17 information contained in that exhibit is correct?
18 A. Correct.
19 Q. That was simple.
20 A. Thank you.
21 Q. But to be clear, the Dignity organization doesn't
22 keep track of its own numbers with respect to ambulance
23 transports?
24 A. Correct.
25 Paul, can I add one -- just as I look at

1 this one thing on here? It looks like that first line are
2 transports being called by other hospitals and other
3 systems potentially send- -- sending them to Dignity. So
4 does that -- You're considering that as part of a Dignity
5 call?
6 Q. I'm not considering anything. I --
7 A. Oh, okay. Because that may be one of the reasons
8 this is so different. There's so many coming from other
9 hospitals that have other relationships with ambulance
10 companies.
11 Q. My point is, Mr. O'Malley, you haven't had the
12 opportunity to review or study this exhibit?
13 A. That is correct.
14 Q. So --
15 A. Yes.
16 Q. I'll move on. Thank you.
17 ALJ EIGENHEER: Okay. Before we move into a
18 new topic, why don't we go ahead and take a short recess.
19 THE WITNESS: Thank you, Your Honor.
20 ALJ EIGENHEER: We'll go off the record at
21 this time.
22 (A recess ensued from 10:14 a.m. to
23 10:31 a.m.)
24 ALJ EIGENHEER: Okay. We are back on the
25 record.

1 As we just discussed off the record, there
2 was a suggestion that we go ahead and admit the
3 Department's exhibits. And after discussions, we agreed
4 to ADHS-1 through -16.
5 And is 25 included in that? Are we --
6 MR. McGOLDRICK: Yes. 25 is no objection.
7 MS. FICKBOHM: We're not objecting to 25.
8 ALJ EIGENHEER: Okay. So ADHS-1 through -16
9 and ADHS-25. No objections, so those are all admitted.
10 Two of those have previously been admitted.
11 So the new ones are admitted as of today.
12 And please proceed.
13 MR. McGOLDRICK: Thank you, Your Honor.
14 BY MR. McGOLDRICK:
15 Q. Mr. O'Malley, are you ready?
16 A. Yes, sir.
17 MR. McGOLDRICK: Okay. I've got no more
18 questions.
19 THE WITNESS: Thank you.
20 ALJ EIGENHEER: Any other cross?
21 MR. BELANGER: Yes, Your Honor.
22 This is -- I'm Jim Belanger, Mr. O'Malley.
23 I represent Maricopa Ambulance.
24
25

1 CROSS-EXAMINATION
2 BY MR. BELANGER:
3 Q. In your introductory remarks, a question from
4 Brendan, you indicated that part of -- You were a CPA?
5 A. No.
6 Q. You're not a CPA?
7 A. No.
8 Q. But you're engaged -- Part of your duties have
9 been financial planning with various entities that you've
10 worked with?
11 A. Yes, sir.
12 Q. What does that entail -- financial planning?
13 Just a brief -- It could entail a lot of things, but
14 briefly.
15 A. Service line plans developing projections and
16 forecasts and operating budgets for hospitals and
17 long-range financial planning for hospitals.
18 Q. You also indicated that one of the entities you
19 were with -- I believe it was Presbyterian hospital in
20 New Mexico -- had its own ambulance service.
21 A. Yes, sir.
22 Q. Did that do 911 transports, or the equivalent, in
23 New Mexico?
24 A. Yes, sir, it did.
25 Q. Did they do interfacility transports?

1 A. Yes.
2 Q. How many ambulances?
3 A. I don't know. It's been a long time since I
4 worked there. I can't remember the details.
5 Q. Were you involved in the administration or
6 oversight of the ambulance operations at Presbyterian?
7 A. No, sir.
8 Q. You indicated on your direct examination that one
9 of the benefits of working with Community Ambulance would
10 be an integration of medical records.
11 A. Electronic medical records.
12 Q. Electronic medical records?
13 A. Yes.
14 Q. That would be one of the benefits?
15 A. That was an opportunity that we're currently
16 exploring.
17 Q. Thank you.
18 You understand that in its application,
19 Community Ambulance is applying for a CON to be able to do
20 interfacility and convalescent transports for entities and
21 individuals in addition to Dignity Hospital?
22 A. Yes, sir, I'm aware.
23 Q. You understand that the ground ambulance service
24 in Arizona is regulated by the Department of Health
25 Services?

1 A. Yes, sir.
2 Q. And that their -- their goal is to ensure that
3 the system of ground ambulance service -- or, one of the
4 goals, as articulated in the guidance document, is to make
5 sure that every individual in Arizona has the opportunity
6 to have ground ambulance service, be it 911 or
7 interfacility transport?
8 A. Yes, sir.
9 Q. It makes sense --
10 A. Yeah.
11 Q. -- that they would have that goal and at the
12 highest -- at the highest service possible within a
13 regulated system. You understand that?
14 A. Yes, sir.
15 Q. If Community Ambulance integrates its electronic
16 medical records with Dignity, what would happen if they
17 went to a non-Dignity facility that had different
18 records -- a different record system?
19 A. Yeah, so what we've been talking about -- and --
20 and Mr. Richardson can provide more color during his --
21 his testimony. We're looking at core components of the IT
22 systems connecting. So right now, there's a lot of paper
23 involved in handoffs and validating information on the
24 patient, demographics, payer information, critical
25 clinical information around stats, vitals, things like

1 that that we have in our electronic medical record or that
2 they might have in their electronic medical record, so
3 it's not about standardizing to one system. It's about
4 creating a platform where we can share information to
5 improve the efficiency of the handoffs and minimize the
6 paper involved in that process.
7 Q. Is that not something that you could
8 contractually require with anybody that you contracted
9 with to provide -- provide interfacility ambulance
10 transports?
11 A. It hasn't been done yet. I -- I think
12 theoretically, yes.
13 Q. It could be done?
14 A. I believe so.
15 Q. You said you started -- in the latter part of
16 2014, Ms. Hunt brought to you a concern regarding
17 ambulance transports.
18 A. Yeah, beginning of 2015.
19 Q. And then you continued through 2014, beginning of
20 2015 to analyze the problem?
21 A. Yes, sir.
22 Q. Did she ever say to you, "Mr. O'Malley" -- or,
23 "Jeff" -- I assume she would call you Jeff. She wouldn't
24 call you Mr. O'Malley.
25 A. Depends how much trouble I'm in.

1 Q. To the effect that "Let's figure out how many
2 transports we actually need as a hospital system in
3 Maricopa County. Jeff, is there a way for us, as a
4 hospital system, to figure out internally how many
5 transports we require as a system?" Did she ever ask you
6 that?
7 A. She asked me for data around transports, and that
8 was part of my investigation process, and I was unable to
9 provide her with that data.
10 Q. You were unable to amass that kind of information
11 from within the Dignity system?
12 A. Or from our providers, correct, sir.
13 Q. You've indicated that there were at least two
14 hospitals, I believe -- and correct me if I'm wrong --
15 Laveen or the Arizona General Hospital. So at least there
16 were two hospitals -- make sure that I'm correct on
17 this -- that maintain their own logs regarding ground
18 ambulance transports?
19 A. Yes, Arizona General Hospital, I believe, had
20 some manual logs that they were tracking.
21 Q. And where is -- Arizona General Hospital, I know
22 there's one -- Laveen, right? Is that correct, or is that
23 incorrect?
24 A. Yes, sir. That is a 16-bed hospital in Laveen.
25 Q. And is there one in -- Is there another Arizona

1 General Hospital?
2 A. There will be. It's opening, we think, in
3 November. Arizona General Hospital Mesa on the east side
4 of Mesa.
5 Q. Did you -- did Dignity produce -- are you aware
6 whether Dignity produced the logs associated with
7 transports from those entities?
8 A. I don't believe so. The logs that I saw were
9 handwritten. They were difficult to read. There was a
10 lot of missing information, an incomplete data set. I
11 didn't think they would be valuable.
12 Q. You realize they were subpoenaed?
13 A. I -- No, I don't. I don't know that that was
14 subpoenaed. We will have people to testify to those logs,
15 though.
16 Q. You indicated that Dignity -- Well, there was
17 testimony from Ms. Hunt -- and I believe you echoed it in
18 some respects -- that Dignity is expanding. Like, for
19 example, they're adding a tower in the East Valley to one
20 of the hospitals, and so they're -- they're expanding
21 their footprint to deliver health services in Maricopa
22 County, right? You would agree with that?
23 A. I would agree.
24 Q. Right.
25 And so before Dignity does that, I assume

1 they do some kind of financial analysis to make sure that
2 whatever expansion they undertake is economically viable?
3 A. Yes, sir.
4 Q. For example, have you ever been -- There's a
5 little town between Wickenburg and Sun City. It's about
6 halfway out. I think it's called Morristown. Have you
7 ever been there?
8 A. I've probably driven by it, but I don't remember.
9 Q. I drove by there once about a year ago. And
10 there's a little bar and the band Foghat was going to play
11 in this little bar. I think there was probably 11 people
12 there. If -- if I said Dignity should put a 112-bed
13 hospital in that little burg, that would be absurd,
14 wouldn't it, because there's no need for it?
15 A. No. What we'd want to do is identify the need --
16 actual health care needs and try to figure out how to
17 solve the problem.
18 Q. Have you done an analysis of the actual health
19 care needs of the populations west of the 303?
20 A. I have not. It is now the responsibility of the
21 chief strategy officer for Dignity Health.
22 Q. Do you know if RBR has done that?
23 A. I don't believe they have.
24 Q. We've looked at a number of maps of Dignity
25 hospitals and Dignity facilities, I think some with you

1 and some with Ms. Hunt -- the Dignity hospitals and
2 Dignity majority-owned facilities. And she testified that
3 it was her expectation under the contract that the
4 transports that would be done by Community Ambulance would
5 be by the Dignity hospitals and the Dignity majority-owned
6 facilities. Do you remember that testimony?
7 A. My understanding was she was commenting on the
8 transports currently and historically, not prospective --
9 not looking prospectively how transports would be done in
10 the future.
11 Q. Are you aware of any Dignity-associated
12 facilities that are outside of Maricopa County -- Maricopa
13 Ambulance's certificate of necessity service area?
14 A. There's -- there's a -- I'm sorry. In Maricopa
15 County?
16 Q. Yeah. In Maricopa Ambulance's certificated
17 service area, are you aware of any Dignity-affiliated
18 facilities that are outside of Maricopa Ambulance's
19 service area?
20 A. I don't believe there are.
21 Q. Are you aware -- So the same thing would be true
22 of ABC, that there are no Dignity-affiliated facilities
23 outside of ABC's service area?
24 A. Correct.
25 Q. And -- and likewise, with AMR?

1 A. Correct.
2 Q. And also, a number of other providers that
3 have -- Well, I'll strike that question.
4 ALJ EIGENHEER: Are we -- I'm sorry. Did
5 we decide -- did we decide yesterday that the facility in
6 Surprise may be outside your certificated area?
7 THE WITNESS: We don't know where it's at.
8 I don't know the address, so I'm basing it on what I know
9 today --
10 ALJ EIGENHEER: Okay.
11 THE WITNESS: -- not where we're going to be
12 opening up new facilities. I believe today that there's
13 no facilities that are not within the Maricopa CON.
14 ALJ EIGENHEER: Okay.
15 BY MR. BELANGER:
16 Q. When we convened the -- the study group, the
17 analysis group -- I don't know what you called it.
18 A. The committee.
19 Q. -- the committee back in 2000- -- late '14, 2015,
20 did you include anybody from the Department of Health
21 Services?
22 A. No, sir.
23 Q. No?
24 A. Huh-uh.
25 Q. Have you ever looked at the Department's website?

1 A. A few times.
2 Q. Did you -- did you ever -- So -- so you say you
3 were attempting to gather a bunch of information regarding
4 ambulance transports in Maricopa County for purposes of
5 Dignity's evaluation. Did you understand that the Bureau
6 regulates ground ambulance transports throughout the
7 state?
8 A. Not immediately. But over time, I became aware
9 of that fact.
10 Q. When did you become aware of that?
11 A. It's really -- I don't know. I couldn't give
12 you a specific date. Certainly before Maricopa --
13 Community Ambulance filed its CON application. I would
14 say probably sometime in late 2015 maybe.
15 Q. Have -- have you -- Are you familiar with the
16 kind of information that's on the DHS website now?
17 A. I've looked around on it for a few different
18 things, but I can't recall specifically what I was out
19 there looking for.
20 Q. Do you realize they have a map of every CON
21 holder and their proposed service area?
22 A. Yes.
23 Q. That their CONs -- every CON is listed?
24 A. Yes.
25 Q. ARCRs, all the kinds of ambulance transport

1 information and financial information? Are you aware of
2 that?
3 A. Not the ARCRs.
4 Q. Do you think that would have been a good resource
5 to have as part of your committee in terms of evaluating
6 the ground ambulance transport needs of Dignity Health?
7 A. I don't know the financial position of another
8 organization or the total of transports that another
9 organization is doing -- how that would be relevant to the
10 Dignity Health transport needs.
11 Q. So -- so your focus and the focus of the
12 committee was solely -- and I think you've said this
13 before -- solely on Dignity, what Dignity needed?
14 A. Dignity and our -- our partners. We've talked to
15 them as well.
16 Q. Yet you stated yesterday that one of the concerns
17 that Dignity had was transports from rural areas to
18 Dignity facilities. Do you remember that?
19 A. Yes. Yes.
20 Q. What rural areas were you talking about? Only
21 those in Maricopa County or --
22 A. No. I believe it was outside of Maricopa. That
23 was the concern. Smaller cities outside -- within
24 Maricopa, smaller cities, but definitely outside from
25 other -- around the state.

1 Q. You understand Community Ambulance will not be
2 able to do those transports?
3 A. Yes, sir, I do.
4 Q. You understand that if there's an emergency
5 response needed anywhere in Maricopa County -- say out by
6 Lake Pleasant, there's a huge accident, they're not going
7 to be able to respond to that?
8 A. Yes, sir.
9 Q. You understand they can't even enter into a
10 mutual aid agreement that doesn't -- that their CON does
11 not provide authority to serve? In other words, for 911
12 transports, if there's a mutual aid -- they can't enter
13 into a mutual aid with another provider to do 911
14 transports?
15 A. I don't know about mutual aid agreements.
16 Q. You know nothing about them?
17 A. No.
18 Q. Backup agreements?
19 A. Backup agreements like the one that Dignity has
20 with Maricopa or -- You're talking about between
21 ambulance companies?
22 Q. Yeah.
23 A. Yeah, I'm not familiar with those.
24 Q. So you're not aware of any limitations of a
25 ground ambulance service provider if it does not -- if it

1 doesn't have authority to do a certain kind of transport
2 in its CON, you're not aware of whether that limits its
3 ability to enter into a backup agreement or mutual aid
4 agreement?
5 A. I'm not aware. It seems if that you have backup
6 agreements, it's going to be limited to what's allowed in
7 your CON specifically.
8 Q. When you did the RFI and you sent it to the five
9 entities back in early part of 2015, why didn't you send
10 it to the Department?
11 A. I was looking for information from ambulance
12 transportation companies that would help us understand how
13 we could build a better solution, and so the assumption
14 was we should be working with ambulance companies to do
15 that.
16 Q. You said something that I thought was a little
17 bit remarkable, but maybe it wasn't. You indicated that
18 with Community Ambulance, you could have a facility -- or,
19 Dignity could have a facility somewhere in the proposed
20 service area and Community Ambulance -- and you said --
21 or, it might have been Mr. Richardson -- "Well, we have a
22 facility and we want ambulances there. We might only get
23 five transports a month."
24 And his response was "It doesn't matter.
25 We'll put an ambulance there anyway."

1 Do you understand that contracts that are
2 entered into between ground ambulance service providers
3 and entities such as Dignity are reviewed by the
4 Department?
5 A. Yes, sir.
6 Q. You understand -- Do you have any idea what the
7 Department analyzes when it's given such a contract?
8 A. Not in any detail.
9 Q. Do you understand that in the guidance document,
10 one of the things that the Department is required to look
11 at is, if they allow an entity like Community Ambulance to
12 have a CON, whether there will be a negative upward
13 pressure on rates that are charged by a ground ambulance?
14 A. I do know the Department looks at rates.
15 Q. So if you park an ambulance at a facility
16 somewhere where Dignity wants an ambulance and they have
17 an ambulance there 24 -- 7 days a week, 24 hours, but
18 there's only five transports, they're going to have to pay
19 for the two persons that attend the vehicle, correct?
20 A. Yes, sir.
21 Q. Maintenance of the vehicle?
22 A. That would be an inefficient model.
23 Q. It would be an incredibly inefficient model?
24 A. Yes, sir.
25 Q. And you could probably -- I don't know, but it

1 might not be approved by the Department because expending
2 that kind of money on a dormant ambulance might not be in
3 the best interest of the regulated system as a whole. You
4 would agree with that, right?
5 A. Right. But I don't know that I said the
6 ambulance could be parked at the hospital. What I said --
7 thought -- I could be wrong. If I am, I'm sorry -- that
8 we would have an ambulance provider that would be able to
9 meet the needs of that facility. So I didn't -- I don't
10 think I said they would be parked there 24/7. It would be
11 part of the system of ambulance that we're developing with
12 the partners.
13 Q. With the six ambulances that they proposed to use
14 in the application?
15 A. Year one.
16 Q. Year one.
17 Do you expect more than that after year one?
18 A. I expect growth to continue, as we outlined from
19 Ms. Hunt and myself.
20 Q. At the time you -- you also said something that I
21 thought was, again, somewhat remarkable. You said that
22 when you were negotiating your ground -- the services
23 agreement with AMR, you thought you had negotiated a
24 coup -- my words -- or some kind of outstanding benefit
25 when they put into the contract that there would be

1 response times for interfacility transports.
2 A. Yes, sir.
3 Q. Did you not understand that that was part of
4 their CON?
5 A. No, sir. At that point in time, we had no
6 agreements with any providers on ambulance services that
7 had response times, so we felt like this was a win.
8 Q. You felt like it was a win? You didn't realize
9 they had already committed to that in their CON?
10 A. No.
11 Q. It never -- never occurred to you to ask the
12 Department what kind of standards, if any, applied to
13 urgent and non-urgent interfacility transfers?
14 A. No.
15 Q. So you had no idea who had requirements in their
16 CONs for purposes of providing interfacility transports?
17 A. When we signed the agreement, there was only one
18 ambulance company at the time.
19 Q. And that was in November of 2015?
20 A. Yes, sir.
21 Q. And then when Maricopa County -- Maricopa
22 Ambulance came online, are you aware of the fact that
23 their CON included response times?
24 A. I believe I was, yes.
25 Q. In fact, their CON is attached to the proposed --

1 the agreement that Ms. Hunt has executed.
2 A. Yes.
3 Q. You understand when Maricopa Ambulance enters
4 into a contract with Dignity to provide transports, that
5 the transport standards set forth in the CON, which are
6 identical to the standards that are in the contract --
7 that those response times are regulated by the Department?
8 A. I believe so.
9 Q. And that if there was any failure to respond --
10 The way that the Bureau analyzes response times, if there
11 was any failure to respond within a timely fashion as
12 those standards are articulated and analyzed, the
13 Bureau -- that would be substandard performance?
14 A. I believe the Bureau has a lot more information
15 that they're getting from the ambulance providers than
16 we're getting. So when we see a report that says they're
17 a 100 percent compliant with everything and there's no
18 data to back it up, we don't even know if they've been
19 categorized correctly based on the level of need that's
20 provided by the physician or the clinical providers.
21 Q. You've never received that kind of report from
22 Maricopa Ambulance?
23 A. Correct. I've seen a report -- a draft report
24 from AMR that had errors in it, and I've never got a
25 detail of any of this.

1 Q. From AMR?
2 A. From AMR.
3 Q. Okay. When -- Do you know when the first time
4 Maricopa Ambulance did a transport for Dignity?
5 A. I do not.
6 Q. Was it prior to 2017?
7 A. Presumably.
8 Q. Do you recall sending an email to Glenn Leland --
9 or, Glenn Leland sending an email to you indicating that
10 Dignity would not use Maricopa Ambulance because it didn't
11 have a contract and would not get the 30 percent discount?
12 A. Sorry. Say that again.
13 Q. Do you recall receiving an email -- In the
14 emails that we -- that you disclosed and we just looked at
15 them -- and we can call it up -- but an email from Glenn
16 Leland indicating that he had been advised that Dignity
17 would not use Maricopa Ambulance to do ground ambulance --
18 to do interfacility transports because Dignity was not
19 getting the 30 percent discount from -- from Maricopa
20 Ambulance?
21 A. I believe we were already using Maricopa
22 Ambulance. We were trying to develop a better
23 relationship.
24 Q. Do you understand that you can't have a discount
25 without a contract?

1 A. Yes.
2 Q. Do you understand that -- So we've talked a
3 little bit about financial planning. We've talked a
4 little bit about why Dignity might not put a hospital out
5 by where the little bar is where Foghat played a year and
6 a half ago between Sun City and Wickenburg, that an
7 ambulance company has to effectively deploy its resources
8 in order to remain economically viable?
9 A. Yes.
10 Q. Do you understand that if you have a contract to
11 provide a certain number of transports or that you're
12 going to be providing transports, that allows an ambulance
13 company to be able to project the number of transports
14 that it might be getting pursuant to the contract and that
15 it can, therefore, theoretically more effectively array
16 its ambulances in the community?
17 A. I don't understand the question.
18 Q. Well, if you -- If -- if prior to Maricopa
19 Ambulance having a contract with Dignity, for example, to
20 provide transports in the East Valley and they otherwise
21 had a lesser presence in the East Valley, if they got a
22 contract with Dignity to do transports in the East Valley,
23 economically it would make sense to gear up to meet the
24 need that would be required by that contract. Do you
25 agree with that?

1 A. Let me just clarify. Does it make more sense to
2 an ambulance company to gear up to meet the needs after
3 they get a contract? Is that the question?
4 Q. Yeah.
5 A. So then what I would have to do is trust that
6 there's a high-quality, readily available ambulance
7 company that will meet my needs before I sign the
8 contract. That's what I'm being asked to do in that
9 question. I think from the ambulance company's
10 perspective, it probably makes more sense. From my
11 perspective, I want to know you're a -- you're a good
12 ambulance company first.
13 Q. And you all signed that contract with Maricopa
14 Ambulance to provide interfacility transports --
15 A. Yes, sir.
16 Q. -- throughout Maricopa Ambulance's service area?
17 A. Yes, sir.
18 Q. And you understand that Maricopa Ambulance is
19 obligated to meet its CON's mandated response times?
20 A. Based on the ones that they know that they can
21 actually meet the response times on.
22 Q. So let's talk about that for a second. Are you
23 aware of any transport that's been provided by Maricopa
24 Ambulance where they turned down some other request for
25 service in order to be able to provide the transport to

1 Dignity?
2 A. I am not personally aware of that.
3 Q. Are you aware of somebody else that might be
4 aware of it?
5 A. I haven't asked that question, so it hasn't been
6 brought to my attention.
7 Q. So you referenced those two emails from
8 Mr. Leland.
9 A. Yes, sir.
10 Q. And -- and that was in --
11 MR. BELANGER: I think it was Exhibit 194?
12 ALJ EIGENHEER: 193.
13 MR. BELANGER: 193.
14 BY MR. BELANGER:
15 Q. Did you follow up with Mr. Leland and say --
16 Because as you sat there this morning, you seemed
17 mortified and distressed by the comment in the email. Did
18 you follow up with him and ask him, "What do you mean by
19 this?"
20 A. We had subsequent conversations. I don't believe
21 we got into the details of that.
22 Q. Okay. So you had subsequent conversations?
23 A. Yeah. We went from a preferred relationship that
24 was the initial proposal to "I just don't think that's
25 going to work. I -- I think we probably need to start

1 with something."
2 Q. So there was back-and-forth regarding
3 negotiations --
4 A. Yeah.
5 Q. -- for the services contract you eventually
6 signed?
7 A. Yes, sir.
8 Q. And that email was one comment in a continuum?
9 A. Yes, sir.
10 Q. And then there was further discussions with --
11 I'm assuming with Mr. Gibson and with Mr. Leland regarding
12 providing service under a contract with Dignity.
13 A. Most of the contract discussions were with
14 Mr. Leland.
15 Q. Right.
16 Have you ever spoken to Mr. Gibson about
17 Maricopa Ambulance --
18 A. Yes.
19 Q. -- being able to provide service?
20 A. Yes, sir. We had a number of conversations, as I
21 mentioned earlier. I met with every single intervenor,
22 with the exception of DHS, to talk about how we could
23 develop a better ambulance relationship, partnership, set
24 of solutions in this market. And where I'm at today is I
25 have no relationship contractually with AMR. I've got a

1 starting agreement with Maricopa Ambulance and a
2 relationship that's just beginning there. So that's after
3 three years.
4 Q. Well, had -- had Dignity reached out to Maricopa
5 Ambulance prior to 2017 to provide any kind of transports?
6 A. We were in a preferred agreement relationship
7 with AMR. Part of the contractual relationship was that
8 they were going to quarterback all ambulance calls for us
9 and that they would use Maricopa Ambulance, if necessary.
10 Q. Do you know if they ever did that?
11 A. I don't. I asked for that information and never
12 received it.
13 Q. As you sit here today, you're not aware of a --
14 and correct me if I'm wrong -- a transport that's been
15 requested of Maricopa Ambulance where they failed to show
16 up and provide the transport?
17 A. That is correct. Similar to the way the
18 relationship started with AMR.
19 MR. BELANGER: I'm going to ask that that --
20 That's all right.
21 BY MR. BELANGER:
22 Q. Yesterday Ms. Figbohm -- Ms. Fickbohm asked
23 Ms. Hunt about contractual discounts that were either
24 absent or not absent on the ARCR that were submitted as
25 part of Community Ambulance's application. Do you

1 remember that series of questions?
2 A. Yes, sir.
3 Q. Do you know how the Department utilizes the
4 information that's provided in an ARCR in an application?
5 Do you know how they use that?
6 A. My understanding is they use that information to
7 assure that the rates are going to be set appropriately to
8 support the ambulance operation.
9 Q. You indicated that the 30 percent discount that
10 was in the proposed contract was for a certain subset of
11 transports. And I -- I missed that. Would you explain
12 that to me?
13 A. Yes, sir. It's for -- The contract is with
14 Dignity Health, so any patients where Dignity Health is
15 financially responsible for that ambulance transport, the
16 rates in that agreement apply. So if a patient has
17 insurance, the insurance company is the one that is
18 negotiating the rates with the ambulance. So the rates
19 are only going to apply in those instances when a Dignity
20 Health facility is responsible for the payment.
21 Q. Do you have any idea of the -- We've heard
22 11,000 transports. We've heard 18,000 transports. I'm
23 not quite sure what the -- the number is, but let's assume
24 it's 11,300, the number that's in Community Ambulance's
25 application. Do you have any idea what percentage of

1 those would be subject to a contractually discounted rate?
2 A. It would be .000-something.
3 Q. Very tiny?
4 A. It was literally about one a month, maybe two a
5 month. Very small percentage.
6 Q. Is that same -- Okay. Are you familiar with the
7 term "cream skimming"?
8 A. Yes, sir.
9 Q. What is it?
10 A. That is where somebody takes the most attractive
11 component of a larger picture off the table. I don't
12 know. I mean, just, generally speaking, it's where
13 somebody is trying to take a subset that may be more
14 appealing and -- I don't know. I've never had to
15 describe the term before. It's interesting.
16 Q. Do you understand it's a pejorative term in the
17 ambulance industry?
18 A. I've heard it since getting into the CON process.
19 Q. And do you remember looking at the exhibit -- I
20 believe it was DHS-12 -- where a representative from
21 Community Ambulance indicates that "Our loss figures will
22 be lower because we're not going to be doing 911 and we
23 have a -- essentially a vetted population"?
24 A. I remember that.
25 Q. Do you -- do you believe that that's cream

1 skimming, or no?
2 A. I believe they're talking about revenue. I don't
3 think what they were talking about was -- The model of
4 care that we're trying to develop may not be operated
5 under the same levels of efficiency as what you see in an
6 organization that is doing 200,000 or 50,000 transports.
7 So the revenue, I think that comment -- that comment is
8 probably accurate. I don't know. But what we're talking
9 about is developing an interfacility transport system that
10 will relieve the burden on 911 units being pulled off of
11 what they're supposed to do, so hopefully they're going to
12 be allowed to operate a little bit more efficiently. So
13 this is only part of the equation when we're talking about
14 setting up an interfacility transport-only service, and I
15 don't believe this is the first time there's been an
16 interfacility transport-only CON allowed.
17 Q. Do you know how many interfacility transports are
18 generated in Maricopa County in -- in a year?
19 A. I don't know the exact number. I would -- I
20 don't know. Probably -- I don't know. 200,000 maybe?
21 150,000? I don't know.
22 Q. The applicant proposes that there are
23 approximately 300,000 transports.
24 A. Wow.
25 Q. I don't know if that is accurate or not.

1 A. Interfacility transports?
2 Q. But you don't know?
3 A. Huh-uh.
4 Q. Do you realize -- You -- you discussed with
5 Mr. McGoldrick the guidance document. You understand that
6 the ground ambulance system in the state of Arizona is a
7 regulated system? You understand that?
8 A. Yes, sir.
9 Q. And it's -- it's not like if Community Ambulance
10 comes in and says, you know, you've got some super-duper
11 kind of ambulance that that's going to generate more
12 consumer demand for ambulance transports?
13 A. Not looking at creating demand for ambulances.
14 Q. The demand is what the demand is. There's going
15 to be a certain number of transports in the system. You
16 understand that?
17 A. I also believe that there is evolving models of
18 health care that have not been contemplated by current CON
19 laws or ambulance transportation companies, and I think we
20 need to be prepared to evolve our ambulance transportation
21 system to meet those needs.
22 Q. Okay. So that wasn't my question, but let me
23 follow up on that just a second.
24 You realize that as part and parcel of the
25 CON, ambulance service providers agree to participate in

1 evaluation meetings and various kinds of commitments to
2 the Department and the Bureau to improve the level of
3 ground ambulance service throughout the state. You
4 understand that?
5 A. Yes, sir.
6 Q. So what you're talking about, for example, might
7 be something that we don't know about right now, might
8 eventually at some point become something that the
9 Department believes ambulance companies -- a service that
10 they should provide and that would evolve and eventually
11 that would become part -- part of the service that's
12 provided by ambulance companies. Is that the evolution
13 you're talking about?
14 A. Your question was about demand. I was trying
15 to -- I was trying to provide some color that I think the
16 demand will shift and I think that demand shift may be
17 obscured or helped based on the ambulance companies that
18 are currently operating in that environment meeting as
19 part of that council looking for improvement. What I'm
20 saying is I'm looking for somebody to innovate and help us
21 evolve the ambulance system.
22 Q. Okay. That really didn't answer my question.
23 At the moment there's a certain number of
24 transports and it's -- it's not -- it's not like if I need
25 an ambulance because I'm at a Dignity facility and I need

1 to go to Barrows because of something that's happened in
2 my brain, that I'm going to say, "Well, I want Community
3 Ambulance because they have yellow-painted ambulances."
4 There's -- there's a need that's required, and that need
5 is not static but it's based on population, it's based on
6 demographics, it's based on the existing population in
7 Maricopa County and what you would project to be the
8 number of ambulance transports available in the system.
9 You understand that?
10 A. I understand that there's a need, but -- and that
11 the -- the need is based on patient condition. And I
12 would -- I would say that the impact that -- a patient's
13 experience on an ambulance affects their experience
14 overall with that healthcare system. So it can negatively
15 impact the use of our system in the future if we have bad
16 patient experiences throughout the continuum of care that
17 I mentioned.
18 Q. Okay. Once again, that's a great answer, but
19 it's not my question. So let me -- let me try to focus
20 you in on what I want you to answer.
21 A. I'm sorry.
22 Q. Part of the guidance document is to make sure
23 that the existing CON holders in this regulated system
24 have enough transports and economic viability to be able
25 to service every ambulance need in the state of Arizona.

1 Do you understand that that's one of the requirements of
2 the guidance document?
3 A. Yes, sir.
4 Q. And that if you add -- And you realize that
5 Maricopa Ambulance has only had its CON since 2016?
6 A. Yes, sir.
7 Q. And AMR, I think, probably a little bit longer
8 but not in Maricopa County because of the Rural/Metro
9 acquisitions. You understand that?
10 A. Yes, sir.
11 Q. So we have a regulated model right now that's
12 been in existence with -- with ABC, AMR, Maricopa
13 Ambulance, and the other persons not present that have the
14 ability to do the same exact service that Community
15 Ambulance does, that the goal of the Department is to make
16 sure that all of these participants have the ability to
17 remain economically viable based on the transports that
18 they're doing?
19 A. I believe those are part of the guidelines.
20 Q. And that you understand that 911 -- So Dignity
21 has emergency departments, right?
22 A. Yes, sir.
23 Q. One of the -- I do a lot of work for Banner.
24 And one of the things that Banner says regularly is "We do
25 free health care all the time," because the emergency

1 department -- you know, people walk in. You have no idea
2 whether they're going to be able to pay you or not, but
3 you have a duty to serve them.
4 A. Yes, sir.
5 Q. Same thing with 911, right? You get a 911 call.
6 You can't say, "Oh, that's Belanger. He's got plenty of
7 money. We're going to go pick him up." Strike that
8 because I don't. Or "We've got Mr. Smith, who doesn't
9 have that much money. We're not going to do that."
10 They're obligated to do that response, aren't they?
11 A. Yes, sir.
12 Q. And they eat that cost if -- if, in fact, there's
13 no ability to --
14 A. Yes.
15 Q. -- be remunerated for it?
16 A. Yes. I'm very familiar with that model of health
17 care.
18 Q. That's not the model that Community Ambulance is
19 seeking?
20 A. I'm sorry?
21 Q. That's not the model that Community Ambulance is
22 seeking the CON for?
23 A. They adopt our financial assistance and charity
24 care policies.
25 Q. They're not going to do 911?

1 A. Oh, for 911 business, you're right. They're not
2 doing 911.
3 MR. BELANGER: I think I'm almost done,
4 Mr. O'Malley. I just want to look at a couple of other
5 things.
6 I think that might be it -- Hold on.
7 BY MR. BELANGER:
8 Q. Are you aware that certain interfacility
9 transports require a nurse?
10 A. Yes, sir.
11 Q. How many -- how many interfacility transports, if
12 you know, would Dignity expect to have that would require
13 a nurse to be on board?
14 A. I requested that data and I've never gotten it,
15 so I don't know.
16 MR. BELANGER: Could we look at 192? It's
17 Community Ambulance 192.
18 BY MR. BELANGER:
19 Q. Do you know who Matt Karger is?
20 A. Yes.
21 Q. Have you ever seen this email which is
22 Exhibit 192?
23 A. I don't . . .
24 Q. You're not cc'd on it, so it's possible you've
25 never seen this.

1 A. Okay. I've read it.
2 Q. Have you -- have you seen it before?
3 A. No.
4 Q. Have you ever discussed this with Mr. Karger
5 about Maricopa Ambulance's service to Dignity?
6 A. Not specifically.
7 MR. BELANGER: I think I'm done.
8 ALJ EIGENHEER: Do you want to offer that?
9 MR. BELANGER: I don't know that he could
10 provide -- I mean, I'd offer it, but I'm not sure --
11 MR. MURPHY: Matthew Karger's --
12 MR. BELANGER: Yeah, he's going to testify.
13 MR. MURPHY: -- going -- going to testify.
14 MR. BELANGER: He's going to testify.
15 ALJ EIGENHEER: Okay. Any other cross?
16 MS. HOFMEYR: Yes. Thank you, Judge.
17
18 CROSS-EXAMINATION
19 BY MS. HOFMEYR:
20 Q. Mr. O'Malley, my name is Adriane Hofmeyr. I
21 represent ABC Ambulance in this proceeding.
22 MS. HOFMEYR: Judge, I think we've got
23 45 minutes -- is that right? -- and everybody's going to
24 shut down?
25 ALJ EIGENHEER: Yes. But feel free not to

1 take all that time.
2 MS. HOFMEYR: Judge, if you are getting
3 tired and not listening anymore, please warn us.
4 ALJ EIGENHEER: Not at all.
5 BY MS. HOFMEYR:
6 Q. And I'm going to repeat the warning of what
7 everybody said yesterday. I'm going through here and
8 there may be some repetition, and I'm going to be fluffing
9 around with papers. I apologize. I will try not to
10 repeat.
11 I want to start off with trying to get a
12 clear idea of -- of your capacity and when you say
13 something, whose hat you wear. You did mention in your
14 testimony a little earlier that you wear two hats, that
15 you are Dignity and also on the board of RBR. So my
16 understanding of your testimony earlier today is that you
17 made it very clear that everything you're testifying to
18 today is on behalf of Dignity Health. Is that correct?
19 A. Yes.
20 Q. So what you're testifying here today and
21 yesterday is not in your capacity as a board member of
22 RBR. Is that right?
23 A. Unless I'm asked a specific question about that
24 role.
25 Q. Okay. So the context will make it clear when

1 you're switching hats?
2 A. Yes, ma'am.
3 Q. And you also used a word a little earlier -- I'll
4 point you to it. If I'm wrong, you can correct me. "I
5 was trying to inform Community Ambulance of the needs of
6 the customer in Arizona." So that use of the word
7 "customer," do you agree that Dignity Health is going to
8 be the proposed customer?
9 A. In the extent that we would have an agreement and
10 there's a customer to the agreement.
11 Q. Well, to the extent that you are going to be
12 using their services, you're going to be using their
13 services as a customer, correct?
14 A. Yes.
15 Q. Do you agree that Dignity has control of RBR --
16 has a controlling interest in RBR?
17 A. I believe we have a majority interest.
18 Q. Would you have a controlling interest?
19 A. Consolidating interest. Maybe if you would
20 define "controlling interest."
21 Q. Well, do you recall that you've testified in the
22 Superior Court that Dignity has a controlling interest in
23 RBR?
24 A. I don't recall.
25 MS. HOFMEYR: Judge, if you could call up

1 CA-32.
2 If we could go to page 18, at the bottom of
3 page 17, if we could overlap it a little bit there.
4 BY MS. HOFMEYR:
5 Q. Do you agree -- Well, I probably should show you
6 page 1 of this document to show you what it is.
7 MS. HOFMEYR: Judge, if you could scroll
8 back without making everybody dizzy.
9 BY MS. HOFMEYR:
10 Q. Do you agree that you testified in Superior Court
11 on September the 28th, 2017?
12 A. Yes, ma'am.
13 Q. On page 18 -- bottom of page 17, you were asked a
14 question: "So did you say Dignity Health is a
15 50.1 percent ownership interest in Community Ambulance?"
16 And you answered: "Yeah. Yeah. Yeah,
17 controlling interest."
18 Do you agree with that?
19 A. Yes.
20 Q. Okay. So you're not -- Are you disputing the
21 fact that you think Dignity has a controlling interest
22 in --
23 A. "Control" is an interesting word. That's why I
24 answered we have majority ownership. You know, we
25 consolidate from a financial standpoint. Controlling --

1 We also have a lot of supermajority rights on the board
2 where both parties need to agree to it. So I just -- For
3 purposes of this Court, I didn't want to provide the
4 understanding that Dignity Health just makes all decisions
5 and that's the last decision. This is a partnership,
6 so -- I don't know.
7 Q. Within the last year, you described your interest
8 in Dignity [sic] as a controlling interest.
9 A. No, I see that.
10 Q. I don't want to go into this right now, because
11 we're going to be putting up the agreement later. Would
12 you agree that the voting rights of the board of managers
13 are slightly weighted in favor of which board members have
14 a higher ownership interest?
15 A. Yea, it does warrant a more detailed look because
16 there are certain decisions that are supermajority, as I
17 mentioned, and then some of them you're voting your
18 ownership.
19 Q. So you testified a little earlier today that you
20 believe -- and correctly so -- under the contract, that
21 the -- the members of the board of managers of RBR have a
22 fiduciary duty to RBR. Is that correct?
23 A. Yes.
24 Q. So you understand that you do have a fiduciary
25 duty to RBR, correct?

1 A. As a board member, yes.
2 Q. Do you owe any fiduciary duties to Dignity
3 Health?
4 A. Do I have fiduciary duties to Dignity Health?
5 Q. Yes.
6 A. Other than being a good steward of our financial
7 resources, I don't oversee any budgets today. I don't
8 have any financial responsibility other than the decisions
9 I make on expenses and things like that, so I think, by
10 definition, I do have some fiduciary responsibilities,
11 yes.
12 Q. Towards Dignity Health?
13 A. Yes.
14 Q. To what degree are you concerned, wearing your
15 Dignity hat, about the profitability of RBR?
16 A. I don't have any concerns today.
17 Q. Is profitability an important issue for you that
18 RBR become a profitable enterprise?
19 A. RBR is a profitable enterprise.
20 Q. If RBR gets the CON and operates in Arizona,
21 would your hope be that it become a profitable enterprise?
22 A. Yes, we would expect it to operate above
23 breakeven.
24 Q. Would you agree that the imperative for RBR to be
25 a profitable enterprise may not always coincide with the

1 needs of its customer Dignity?
2 A. I'm not sure if I understand your question.
3 Q. You've agreed with me -- Well, you've stated
4 that you would hope that RBR would be a profitable
5 enterprise in Arizona, right?
6 A. Yes.
7 Q. A profitable enterprise does not necessarily
8 coincide with the needs of the customer who's using its
9 services, correct? Those needs aren't always aligned?
10 A. Correct. Just like the relationship we had with
11 AMR, exactly.
12 Q. Well, no, I don't know that it is. In fact, I'll
13 remind you of what you testified a little earlier today.
14 You said it's different to AMR. You said it's different
15 where you can sit down with the parties and they will
16 commit to you.
17 A. Absolutely. I was talking about the customer
18 relationship. You were talking about a customer. We were
19 a customer relationship only with AMR.
20 Q. Right. Then you went the next step and you said
21 and that's -- this commitment is independent of the volume
22 of transports. Do you remember testifying to that?
23 A. Commitment?
24 Q. The commitment from RBR would be independent of
25 the number of transports.

1 A. What was the context?
2 Q. I'll read the sentence back to you. "It's
3 different where you can sit down with the parties and they
4 will commit to you independent of the number of
5 transports."
6 A. Yeah, that was in reference to a very specific
7 growth opportunity where we may have a new facility that
8 doesn't have 150 transports a day. It's a smaller entity.
9 And when you have a partner, you can work together to best
10 plan ambulance services. That was the reference to . . .
11 Q. Would you -- You do agree that the number of
12 transports is important to the economic viability of an
13 enterprise, right?
14 A. Yes. I think if you have one transport, it would
15 be very difficult to operate an ambulance company
16 profitably.
17 Q. And if RBR ends up in a situation where its
18 volume of transports is not an imperative because its
19 customer doesn't make it imperative, it puts RBR in an
20 unfair competitive advantage over the other CON holders in
21 the room, right?
22 A. I'm not sure I understand your conclusion.
23 Q. Your -- your testimony earlier was you were
24 hoping for a partner --
25 A. Yes.

1 Q. -- that would be independent of volume of
2 transports. Now I'm extrapolating.
3 A. No.
4 Q. You liked the fact that RBR would have some
5 independence from volume of transports.
6 A. I really feel like that's being misconstrued.
7 What I'm trying to say is they would put the needs of
8 Dignity Health first and foremost. That's what I'm trying
9 to say.
10 Q. Over and above their own financial needs?
11 A. I think it's their -- they go together. And
12 that's why having a partnership, you have aligned
13 financial interests as well, so we would work together at
14 the board level.
15 Q. Do you agree that the CON holders in the room
16 today have that same luxury, that they do not -- have that
17 same luxury? Let me finish my question there.
18 A. I'm not sure what luxury you're referring to. I
19 believe the CON holders today have the ability to develop
20 whatever relationships they would like to develop in the
21 market.
22 Q. Do you agree that you testified AMR, at least at
23 a minimum, has indicated to you that being able to place
24 ambulances where you would like them to sit was not going
25 to be possible, correct?

1 A. That was taken off the table during the
2 negotiation.
3 Q. And I'm presuming that that's because it is not
4 as economically viable for AMR.
5 A. Correct.
6 Q. And you were hoping that RBR will be able to do
7 that?
8 A. AMR is serving multiple masters. They're serving
9 Banner. They're serving -- serving all these other
10 hospitals and healthcare systems across the market. I
11 have no idea what allocations or commitments they're
12 making for them. I have no idea what level of service
13 they're promising them. Could be a higher level of
14 service. They could put our interest on the back burner.
15 It could -- Our interest could be a matter of
16 convenience. I have no idea what those relationships are,
17 but what they told me was that they would not be able to
18 do what I needed them to do.
19 Q. And, by contrast, RBR would?
20 A. Yes, that would be the plan to do -- how we
21 started in the Las Vegas market and found that there was a
22 need that was not being met. We would sit down in the
23 Arizona market from that exact same point of view knowing
24 we have a successful partnership already to start with.
25 Q. And AMR -- you used the word -- AMR has a number

1 of masters. That's because AMR -- AMR has a number of
2 customers, right?
3 A. You mean healthcare systems providers?
4 Q. I'm using your word. You used the word "master."
5 But RBR would only have one master; is that
6 the hope?
7 A. I -- I know I'm speaking from my perspective that
8 Dignity Health will be a primary customer.
9 Q. You don't know whether RBR is going to be seeking
10 other customers?
11 A. We have in the application around 11,350
12 transports, which the understanding is that those are
13 Dignity Health customers.
14 Q. And if you could take off your Dignity hat and
15 put your RBR hat back on, at any board meetings has it
16 been discussed to grow it beyond the Dignity customer?
17 A. The expectation at the board, if those
18 opportunities for growth come up and they're presented as
19 part of the development plan, we would weigh the
20 opportunity to enhance services in the community and at
21 the same time not taking away from the commitments that
22 have been made to Dignity Health.
23 Q. As long as Dignity remains the primary master?
24 A. As long as we're their primary focus when it
25 comes to providing high-quality transportation.

1 Q. So you testified -- I'm going to change gears a
2 little here -- you first heard about RBR -- you
3 personally, down here in Arizona, first heard about RBR in
4 March 2015. Is that correct?
5 A. That was the first time I met with
6 representatives from the Nevada market. In my job as part
7 of the larger joint venture M&A team, I was aware when --
8 not the day I came into my role, but I started the role in
9 November of 2014. So sometime after that period, I
10 believe I knew the total book of partnerships in Dignity
11 Health and that there was an ambulance partner.
12 Q. And the first time you met -- met with RBR was
13 May 2015, I think you testified to that?
14 A. Yes. Yes.
15 Q. Do you have any recollection of when Dignity made
16 the decision to request RBR to come down to Arizona to
17 provide ambulances services?
18 A. I answered that question earlier. I really don't
19 have a point in time. It was an evolutionary process. So
20 things aren't getting better. We thought they were;
21 they're not. Continue to build a relationship with
22 Community Ambulance. They were a resource internally that
23 I could turn to internally that I could turn to for ideas
24 for solving these transportation problems. So sometime --
25 you know, I think I might have even said this -- probably

1 the Q1 of 2016, somewhere in that time frame.
2 Q. Could it have been 2015?
3 A. I -- I suppose it could. Since I don't know
4 specifically, yes, it could.
5 Q. When you first approached RBR to explore whether
6 they would be interested in moving down to Arizona --
7 let's assume that it is RBR moving down to Arizona -- what
8 was their immediate reaction to you?
9 A. "We need to learn more about the market. We need
10 to understand what's going on." They wanted to understand
11 the environment of ambulance services, who's in the
12 market. So a lot of information requests, a lot of
13 questions. And I think immediately -- I don't know if
14 they knew about the CON process, so I think they had to
15 get more information about the CON process. But I think
16 generally there was a willingness to explore. Again, as a
17 partner -- if one of the partners comes to the table and
18 says, "We think we might need help. Would you be willing
19 to help?" usually the answer is "Let's try and figure this
20 out together."
21 Q. Did they -- Do you know whether they undertook
22 any independent analysis of the need for ambulance
23 services in Arizona outside of Dignity?
24 A. I am unaware of any needs outside of Dignity that
25 they may have analyzed.

1 Q. And at the time -- at around this time that
2 you're starting to get serious with RBR, who are you
3 talking to?
4 A. Predominantly Rob Richardson.
5 Q. And you talked to Rob Richardson late 2015, early
6 2016. Is that right?
7 A. Yeah. The first conversation was in May of 2015,
8 as I testified earlier, but on and off, nonroutine,
9 nonstructured discussions through the rest of 2015.
10 Q. Do you have any recollection or any knowledge
11 of -- You testified earlier that Dignity did not engage
12 EMS Advisors. Is that correct?
13 A. The agreement is between Community Ambulance and
14 EMS Advisors. What I testified was I was referred to Jim
15 Hinton -- sorry -- Jim Hayden internally from one of our
16 hospital CEOs, so I made the initial contact and then I
17 connected them.
18 Q. Okay. Do you have any idea when that agreement
19 was signed?
20 A. I've seen it. And I -- I apologize with all
21 these dates. It was probably, I would guess, early 2016.
22 Q. So just trying to get the time line clear,
23 November 2015, Dignity signs a prefer- -- preferred
24 provider agreement with AMR. Is that right?
25 A. Yes, ma'am.

1 Q. And you are conscious -- At the time you have
2 been talking to RBR. Is that right?
3 A. Yes, I was conscious.
4 Q. You were conscious at the time there was a
5 possibility RBR would be coming down to Nevada -- to
6 Arizona to provide the service?
7 A. No, I wasn't. That wasn't a possibility that I
8 just talked about. We were talking about -- They were my
9 resource internally, and I was going to them. And then I
10 don't know what point in time a decision was put on the
11 table or even a request, "Maybe you could help us out.
12 What does that look like?" So that's what I was thinking
13 that was probably early 2016.
14 Q. So November 2015, you were not thinking about
15 asking RBR to come to Arizona. Is that right?
16 A. Correct.
17 MS. HOFMEYR: Judge, can we put up ABC-82?
18 ALJ EIGENHEER: 82?
19 MS. HOFMEYR: 82.
20 BY MS. HOFMEYR:
21 Q. So the front part of this document is a one-page
22 Amendment to Ambulance Operating Agreement, November 2016,
23 between AMG and Dignity. It's not signed, but it's
24 attached to -- if we could look at page 2 -- an
25 Independent Contractor Agreement for Ambulance Services,

1 also not signed. These are documents provided to us by
2 RBR's attorneys.
3 MS. HOFMEYR: And, Judge, I would like us to
4 go to page 14. Do you have the ability to turn it the
5 right way around, Judge? I'm not sure I do.
6 ALJ EIGENHEER: Any objection to me getting
7 some help on this?
8 MS. HOFMEYR: Not at all.
9 MR. McGOLDRICK: Not from him.
10 MS. HOFMEYR: I think it would be much
11 easier to have it the right direction. Page 14.
12 ALJ EIGENHEER: Okay. There we go.
13 MS. HOFMEYR: So, Judge, if we can expand it
14 a little bit on the very left-hand side. May need to go
15 to the top of the page first.
16 BY MS. HOFMEYR:
17 Q. So these are given to us by RBR. Right at the
18 top, "Cash on Hand July 31, 2016." There's a number
19 further to the left of that that says "January through
20 December 2016." I will tell you I'm not sure what these
21 documents are. All I know is they came from RBR. I'm not
22 sure if these are projected numbers or actual numbers.
23 But I'm looking at the first column. It's
24 got January '16 at the top. And it makes sense to me that
25 that's January 2016. If you can see any reason to

1 disagree with that, let me know.
2 But if we go down that column, just before
3 the big break, there's a number 148,000. Can you see
4 that?
5 A. Yes.
6 Q. And then if you followed that row all the way
7 across to the right-hand side of the page, would you agree
8 with me it seems like somebody is spending 148,000 on
9 mapping, EMS Advisors? There's some names there,
10 "Dr. Payoffs," and a few other items there. This seems to
11 me that there was -- that EMS Advisors had been engaged in
12 January 2016. Would you be able to verify that at all?
13 A. It sounds right. It sounds about the right time
14 for EMS Advisors coming in.
15 Q. Okay. Within potentially two months of RBR
16 signing the contract, somebody has made the decision to
17 engage the services of an Arizona company coming to
18 investigate RBR getting a CON in Arizona?
19 A. Yeah. I think as soon as the -- And again, as I
20 testified earlier, we didn't get in November in that AMR
21 contract what we had wanted originally, so there was
22 already sort of a loss in the ideal relationship that
23 we're looking for. The ability to consider whether or not
24 coming to Arizona made sense for Community Ambulance, they
25 would have to get some other information and they would

1 have to bring in outside consultants to help with that.
2 So I think that's what you're seeing here.
3 Q. Okay. So yesterday you were shown some records
4 and you testified about your issues with AMR in 2018.
5 There were some exhibits that were put up. I don't
6 remember the -- the exhibit number. It doesn't matter.
7 But you were describing to the ALJ issues you had with AMR
8 in 2018, correct?
9 A. Yes.
10 Q. And you've described to the ALJ the issues you
11 had in 2017, correct?
12 A. Yes.
13 Q. Would you agree that none of those issues
14 influenced your decision to engage EMS Advisors and
15 attempt to get a CON for RBR in Arizona?
16 A. I would say that it's far-reaching to say that
17 there was an attempt to go forth with the CON at that
18 point in time. I believe that was part of the Community
19 Ambulance investigation process that started in that
20 month.
21 Q. Well, you -- you agree it was filed in June of
22 2016, right? The application.
23 A. The application was filed.
24 Q. So the decision and commitment had been made for
25 RBR to get a CON in Arizona by June 2016 at the latest,

1 correct?
2 A. Yes.
3 Q. So the issues that you had with AMR after
4 June 2016 did not play into your decision to submit the
5 application, correct?
6 A. What I will say is, as a board member, wearing
7 the hat of Community Ambulance --
8 Q. Well, before you go there, in June of 2016, you
9 were not a board member yet, correct?
10 A. That is correct.
11 Q. And so it's a simple yes-or-no question. The
12 issues you had with AMR after June 2016 did not play into
13 your decision to make the application for RBR, correct?
14 A. The application -- We talked about pulling the
15 application at any point in time. There was -- It was
16 not a finality in June of 2016. We were still trying to
17 understand how is this going to work? What do we need to
18 do? How do we make this successful? So in June of 2016,
19 it still could have been a 180. It still could have been
20 AMR stepping up. It could have been other ambulance
21 providers stepping up. So the decision was not made. It
22 was just that the application had been submitted to
23 continue the process.
24 Q. Is there any evidence that's going to be put to
25 this ALJ to show that you were still in doubt about the

1 fact that you wanted RBR to be here? To your knowledge,
2 is there anything that would be here today -- any document
3 to support that?
4 A. Nothing more reliable than my testimony.
5 MS. HOFMEYR: Judge, can I admit ABC-82?
6 ALJ EIGENHEER: Any objection? Any
7 objections?
8 MR. McGOLDRICK: No.
9 ALJ EIGENHEER: Okay. ABC-82 is admitted.
10 You also referenced CA-32.
11 MS. HOFMEYR: Yes, please.
12 ALJ EIGENHEER: Any objection?
13 MR. McGOLDRICK: No.
14 ALJ EIGENHEER: CA-32 is admitted.
15 BY MS. HOFMEYR:
16 Q. While we're on this exhibit, do you have any idea
17 what "Dr. Payoffs" refers to?
18 A. I have no idea. It's an odd thing to put -- But
19 as the owner, I'm sure Rob -- as the owner of the
20 management company, Rob Richardson could --
21 Q. We could ask Mr. Richardson about that.
22 So to change gears a little bit again, the
23 application has asked for interfacility and convalescent
24 transports, correct?
25 A. Yes.

1 Q. Do you remember who made the decision that
2 convalescent should be included in that list?
3 A. I believe it was just part of a classification
4 that we were requesting through the CON process. The
5 intent is interfacility -- from Dignity Health's
6 perspective, interfacility ambulance transportation.
7 That's the focus in year one.
8 Q. Do you have any idea what percentage of the
9 transports RBR will do, if they get the CON, will be
10 convalescent?
11 A. No idea.
12 Q. You may have testified earlier. What is your
13 understanding of convalescent?
14 A. My understanding -- if I'm wrong, I'm wrong. I
15 thought it was a step just below ALS and BLS level of
16 ambulance.
17 Q. But it still requires a CON. Do you understand?
18 A. I don't know that.
19 Q. Has -- To your knowledge, has either Dignity or
20 RBR done any kind of independent analysis of whether any
21 more convalescent CONs are required in Maricopa County?
22 A. Under my definition that I shared of
23 convalescent, no.
24 Q. So your testimony is that you don't know whether
25 anybody's done the analysis or no analysis has been done?

1 A. I'm unaware of any analysis that's been done on
2 convalescent.
3 Q. And you testified you don't think in the first
4 year any of the RBR transports will be convalescent. Is
5 that right?
6 A. Correct. Those are all ambulance-level ALS, BLS,
7 critical care transports.
8 Q. Have you done -- Let me ask the question first,
9 then ask if you have done the analysis.
10 Do you know what percentage of the proposed
11 transports in the first year are going to be immediate
12 transports?
13 A. No. I didn't have the data available to decipher
14 each.
15 Q. So you don't know what percentage are going to be
16 immediate transports?
17 A. We weren't using the term "immediate." It was
18 the urgent which required immediate response. But, I
19 mean, all we had was the information that we were
20 receiving that did not reconcile. We thought there were
21 higher numbers of immediate/urgent levels of transports.
22 But we didn't have the data.
23 Q. To your knowledge, do any of the transports that
24 RBR proposes to do if they get the CON -- would require an
25 immediate CON?

1 A. I believe they would.
2 Q. And by "immediate," do you understand that in the
3 regulations that is defined as a -- it is essentially a
4 911?
5 A. No.
6 MR. MURPHY: Objection.
7 THE WITNESS: I'm not -- I'm not talking
8 about 911. I mean immediate/urgent. Not 911. I don't --
9 BY MS. HOFMEYR:
10 Q. What do you -- what do you understand by
11 "immediate"?
12 A. Immediate is non-911. It's an urgent transfer
13 that requires transfer within 30 minutes, as defined by
14 the clinicians and the physicians that say "This person
15 needs to be transported immediately." It's not a 911;
16 it's not an emergency call.
17 Q. So you're not using the regulatory term. You're
18 using the term that in the opinion of a clinician at
19 Dignity, it's an immediate or urgent call?
20 A. It's so hard to use these different terms. I
21 mean, I -- I think if a physician says, "We need to move
22 this patient in 30 minutes," and if it's not 911, it's not
23 an emergency, that's what I'm calling urgent. I think
24 that's what they're saying is urgent.
25 Q. Is it your understanding -- and this may be

1 getting technical and referring to the regulations again,
2 so if you don't want to answer, it's fine.
3 Is it your understanding an interfacility
4 CON can do any type of ambulance transport if it's coming
5 out of a facility?
6 A. As opposed to? Which ones can it not do?
7 Q. For example, if, at a Dignity facility, somebody
8 collapses and has a heart attack and needs to go to a
9 different facility, would you -- do you think that a
10 provider with an IFT CON can respond to that call?
11 A. It seems like that would be an emergency call
12 that would go to 911.
13 Q. Okay. So you would agree that an IFT CON would
14 not authorize you to do that kind of call?
15 A. Correct. In my limited clinical expertise.
16 MS. HOFMEYR: Judge, I'm kind of changing
17 track here. It would probably be a good time to break.
18 ALJ EIGENHEER: Okay. We'll go ahead and
19 break for lunch. We'll go off the record at this time.
20 Come back about -- say 1:05.
21 (A recess ensued from 11:46 a.m. to
22 1:04 p.m.)
23 ALJ EIGENHEER: Okay. We are back on the
24 record.
25 Continuing with cross. Yes?

1 MS. HOFMEYR: Thank you, Judge.
2 BY MS. HOFMEYR:
3 Q. Mr. O'Malley, I want to go over the early days of
4 your relationship with ABC. You testified a little
5 earlier that Mr. Thomas reached out to you first. Is that
6 right?
7 A. As a result, I believe -- if I'm recalling
8 correctly, as a result of the RFI that we had sent out to
9 ComTrans.
10 Q. And that would have been about April 2015. Is
11 that right?
12 A. I believe so.
13 Q. And you used the word he established a
14 relationship with you. Does that sound right?
15 A. Yeah, I believe that was his intent.
16 MS. HOFMEYR: Judge, could we put up ABC
17 Number 4? No. It's not Number 4. It's going to be 42.
18 ALJ EIGENHEER: Close.
19 MS. HOFMEYR: Judge, could we make it a
20 little bigger.
21 ALJ EIGENHEER: Yes. Sorry.
22 MS. HOFMEYR: These are emails. The oldest
23 ones are at the end of the document, so if you could go to
24 ABC42-0002.
25

1 BY MS. HOFMEYR:
2 Q. So, Mr. O'Malley, would you agree the date on
3 this email is Monday, April 13, 2015, on there?
4 A. Yes, ma'am.
5 Q. And it's from you to Neal Thomas. Is that right?
6 A. Yes.
7 Q. And I think you testified earlier that you
8 understood that you were emailing this to Mr. Thomas in
9 his capacity as the owner of ComTrans, not ABC. Is that
10 right?
11 A. Yes.
12 MS. HOFMEYR: Then if we can scroll up,
13 Judge, the next email straddles the two pages. If we can
14 get the date in.
15 BY MS. HOFMEYR:
16 Q. Would you agree this is an email from Neal Thomas
17 to you dated April 23, 2015?
18 A. Yes. I thought there was another question.
19 Q. It was a sneeze. Do I need to repeat that?
20 A. No. The answer is yes.
21 Q. Do you remember the date of your RFI?
22 A. Not off the top of my head. It was probably
23 mid-April, April 14th or something like that.
24 Q. Can you look --
25 MS. HOFMEYR: If we can go to page 2 now.

1 BY MS. HOFMEYR:
2 Q. The last paragraph of that email, Neal is saying
3 to you, "ComTrans and our sister company ABC would still
4 like an opportunity to help you build a better
5 transportation system if you don't find what you are
6 looking for in the RFI responses you receive."
7 A. Yes.
8 Q. Do you remember receiving that?
9 A. Yes, I do.
10 Q. And in the first email at the top of the
11 document, first page of the document, is an email
12 addressed from Neal Thomas to you, January 14, 2016. Is
13 that right?
14 A. Yes.
15 Q. And in it, Neal is advising you that ABC
16 Ambulance has received its ambulance license. Can you see
17 that?
18 A. Yes.
19 Q. And he said, ". . . we are now up and operating."
20 Do you see that?
21 A. Yes.
22 Q. Do you recall receiving this email?
23 A. Yes, I do.
24 Q. Do you recall whether you responded to this
25 email?

1 A. I don't recall.
2 MS. HOFMEYR: Judge, can I admit this into
3 evidence?
4 ALJ EIGENHEER: Any objections?
5 MR. MURPHY: No, not from me.
6 MS. HOFMEYR: I'm admitting an exhibit.
7 MR. MEYERSON: No objection.
8 ALJ EIGENHEER: ABC-42 is admitted.
9 BY MS. HOFMEYR:
10 Q. Would you agree at the time you got this email in
11 January of 2016, Dignity already had a preferred provider
12 contract in place with AMR? Is that correct?
13 A. Correct.
14 Q. And would you agree that in January 2016, based
15 on that spreadsheet we looked at before we broke for
16 lunch, that it appears as of January 2016 that
17 EMS Advisors had been engaged. Is that right?
18 A. Based on the expense, it looked like there were
19 expenses occurring in January for EMS Advisors.
20 Q. So then we get to the middle of 2016, June 2016,
21 and RBR submits their application, correct?
22 A. Correct.
23 Q. And you testified a little earlier that in your
24 view, Dignity was still open to using another provider
25 other than RBR even after the application. Is that right?

1 A. I don't know if I said that. I think what I said
2 was we were not committed to the CON process and that we
3 were still open to retracting the application, if
4 necessary, and we were still hopeful that the AMR
5 relationship would improve.
6 Q. Do you remember having a telephone conversation
7 with Neal Thomas in September 2016?
8 A. I don't remember a September 2016 phone call
9 specifically, but I do remember having a couple of phone
10 calls with Neal over the years.
11 MS. HOFMEYR: Okay. Judge, could we put up
12 ABC-7.
13 BY MS. HOFMEYR:
14 Q. So Neal is going to testify that on September 22,
15 he had a phone conversation with you, and he's going to
16 testify that as soon as he put the phone down, he made
17 notes of that conversation. So what I've asked the judge
18 to put up there are Neal's notes that he wrote immediately
19 after the phone call with you. So you can agree with it
20 or not agree with what's in there. This is a recording of
21 what Neal wrote down after that phone call.
22 So he's noting there at the top that the
23 date is 9-22-2016, that he's just hung up -- "hung up the
24 phone with Jeff O'Malley from Dignity Health . . . ." Can
25 you see that?

1 A. Yes.
2 Q. And that you discussed their application for an
3 ambulance license. Can you see that?
4 A. Yes.
5 Q. And you discussed the opportunity to partner with
6 ABC. Can you see that?
7 A. Yes.
8 Q. And in the next paragraph, it would appear that
9 what you said to Neal was "Jeff said they had a very
10 strong partnership with the company in Las Vegas." Can
11 you see that?
12 A. Yes.
13 Q. And then "Once they partnered with that company,
14 the company was able to expand and take over other
15 contracts and grow their market share." Do you see that?
16 A. Yes.
17 Q. And then in the third paragraph, you indicated to
18 Neal, according to this note, that "The plan in Maricopa
19 County is to provide services to all Dignity Health
20 facilities . . . ." Can you see that?
21 A. Yes.
22 Q. ". . . . and then the Dignity partners, such as
23 Mercy Care, where they own 50 percent of their company."
24 Do you see that?
25 A. I see that.

1 Q. So I'm going to talk at this point -- in any of
2 those three paragraphs, do you disagree with any of them?
3 Do you have a recollection that's contrary to what he's
4 recorded there?
5 A. I believe we talked about some of the partners
6 that Dignity Health works with. I do not recall
7 specifically saying Mercy Care plan would be served by the
8 partnership.
9 Q. That next paragraph, Neal recorded that you said
10 that "Anticipated volume was a low of 600 to a high of 900
11 a month . . . ." Can you see that?
12 A. Yes.
13 Q. Does that sound about right to you?
14 A. At the time, given the information I had, that's
15 probably a decent estimate, probably closer to the higher
16 end.
17 Q. And in the next paragraph, you said, according to
18 the note, "They like the idea of using this company
19 because their good working relationship and that they
20 already had partners -- they are already partners." Can
21 you see that?
22 A. Yes.
23 Q. And does that seem about right?
24 A. We -- yes, we do have a good working relationship
25 with Community Ambulance today.

1 Q. And in the following paragraph, it seems from
2 this note that Neal said to you that ". . . . the volume
3 fits squarely within our wheelhouse and within our
4 capacity." Can you see that?
5 A. Yes.
6 Q. And if you go two paragraphs below that, you said
7 that you would be willing to discuss the same or similar
8 relationship if they, meaning Dignity, were not able to
9 get their license. He may be referring to RBR there. Do
10 you agree that that's what he recorded?
11 A. I don't -- I'm sorry. Are you looking at "He
12 said he would be willing to discuss . . . ."?
13 Q. Correct.
14 A. ". . . the same or similar relationship with us
15 if they were not able to get their license," I don't
16 remember that conversation.
17 Q. Do you recall saying to him in the next paragraph
18 "You can't just dip your toe in the water; you have to go
19 all in"?
20 A. I don't recall that.
21 Q. He made a note at the end here that you never
22 mentioned that you could not get what you wanted with the
23 existing providers. Do you remember specifically if you
24 advised Neal during this conversation that you were
25 unhappy with your current providers?

1 A. I don't remember having that conversation, but in
2 an earlier reference, it talked about the inability for me
3 to get data. So that's one of the things that we
4 certainly were unhappy with.
5 Q. Do you recall if you advised Mr. Thomas that you
6 actually owned a majority interest in the company in
7 Las Vegas?
8 A. Do I remember the time when I did that?
9 Q. Do you remember whether you told Mr. Thomas that
10 you had a majority interest in this company?
11 A. I don't remember the conversation --
12 MR. MURPHY: Objection. To clarify, you --
13 by "you," you mean Dignity Health?
14 MS. HOFMEYR: Dignity, yeah.
15 ALJ EIGENHEER: Not him personally.
16 MR. MURPHY: I just wanted to make that
17 clarification for the record. Thank you.
18 THE WITNESS: I don't remember the
19 conversation, but it's very likely that I would have
20 shared that.
21 BY MS. HOFMEYR:
22 Q. So you are disagreeing with -- Well, no.
23 Strike.
24 So my understanding is the next time that
25 you interacted with Neal Thomas and ABC was a lunch. Is

1 that right?
2 A. To the best of my recollection.
3 Q. And that was around February 2017?
4 A. I was thinking March, but you may be right.
5 Q. If we need to clarify that, I believe we have an
6 exhibit. ABC-6.
7 MS. HOFMEYR: Judge, can I admit ABC-7,
8 please?
9 ALJ EIGENHEER: Any objections?
10 MR. McGOLDRICK: No.
11 MR. MURPHY: I have an objection, Your
12 Honor. I don't know what the foundation is to this
13 document. Mr. Thomas hasn't testified how he prepared the
14 note, what context he prepared the note. Mr. O'Malley has
15 testified that he didn't prepare the note, so he did not
16 testify that he prepared the note.
17 MS. HOFMEYR: Judge, I'm happy to admit it
18 when Mr. Thomas testifies.
19 ALJ EIGENHEER: Okay. We'll wait.
20 BY MS. HOFMEYR:
21 Q. So ABC-6 I believe we got from RBR's attorneys,
22 which is a meeting invitation at Durant's on Central.
23 Does that sound about right?
24 A. Yes.
25 Q. And I believe you are right. It is March 1st,

1 2017, not February.
2 MS. HOFMEYR: Judge, can we admit this into
3 evidence, please?
4 ALJ EIGENHEER: Any objections?
5 MR. MURPHY: No, Your Honor.
6 MS. HOFMEYR: It's ABC-6.
7 ALJ EIGENHEER: ABC-6 is admitted.
8 BY MS. HOFMEYR:
9 Q. And I believe you testified earlier that one of
10 the reasons that you wanted to have this lunch, you used
11 the term you were still looking to improve -- well, you
12 were looking to improve the system and looking for
13 partnerships. Does that sound right?
14 A. I was looking to work with our partner Community
15 Ambulance and existing providers, like ABC, to improve the
16 network of ambulance services to develop collaborative
17 relationships towards that end.
18 Q. And I -- I think that you testified earlier
19 specifically that at this meeting, you were wearing your
20 RBR hat. You may not have used that terminology. But I
21 think you said you were in your capacity as a board member
22 of RBR.
23 A. I don't recall saying that. I was --
24 Q. All right. Let me ask you now. What -- When
25 you went to this meeting in March of 2017 with ABC

1 Ambulance, you were with Richard -- Rob Richardson. Is
2 that right?
3 A. Rob Richardson, Charlie Smith.
4 Q. And Charlie Smith is from EMS Advisors. Is that
5 right?
6 A. Correct.
7 Q. And I'll ask you now which hat were you wearing
8 at that meeting: Dignity or RBR?
9 A. I believe I was there representing Dignity
10 Health. I don't think I was on the board yet at that
11 point in time with Community Ambulance, so it would have
12 been a Dignity Health hat.
13 Q. I think you did testify it was March 2017, so
14 that may have followed that.
15 A. That's right.
16 Q. Do you recall discussing with ABC the possibility
17 that they would do backup agreements if RBR was granted
18 the CON?
19 A. Yes.
20 Q. And that would be an agreement between RBR and
21 ABC, correct?
22 A. Yes.
23 Q. Not Dignity and ABC, right?
24 A. It could be done either way.
25 Q. And you testified a little earlier that -- you

1 said that maybe you said something that caused confusion
2 but that Mr. Thomas wasn't particularly excited by the
3 offer that RBR had made. Is that right?
4 A. Correct.
5 Q. Do you agree with -- do you recall whether
6 anybody at the meeting, one of the three -- either
7 Mr. Richardson, Mr. Smith, or yourself -- made it a
8 condition of the backup agreement that ABC not intervene
9 in these proceedings?
10 A. I don't recall that as a condition.
11 Q. Do you recall whether that conversation was had
12 at all at that lunch?
13 A. Really, the -- the nature of the conversation was
14 how can we align and create an alliance. That was really
15 the focus.
16 Q. Do you remember discussing ABC's intervention in
17 these proceedings at all in that meeting?
18 A. Not specifically.
19 Q. Do you remember whether you didn't discuss it?
20 A. No.
21 Q. Do you agree that it was a condition that you had
22 inserted into your contract with AMR? Right?
23 A. I agree that that was the intent.
24 Q. And you testified earlier that you had asked the
25 same undertaking from Maricopa Ambulance, correct?

1 A. What undertaking is that?
2 Q. That they not intervene in these proceedings.
3 A. I asked Maricopa to not intervene in the
4 proceedings?
5 Q. That a request was made to Maricopa Ambulance
6 that they not intervene in these proceedings.
7 A. When was that request? What I had testified was
8 that Maricopa Ambulance, when I sat across the table from
9 them, said that they were not going to intervene. "Don't
10 worry. If you need to do this, we totally understand and
11 respect that." It was before they got their CON. And
12 they said, "We will not intervene or interfere with your
13 efforts. We just want to work with you."
14 Q. Do you agree that at the end of that meeting, ABC
15 did not give you any understanding that it would agree to
16 do backups with RBR. Is that right?
17 A. Correct.
18 Q. I want to go back to this -- this issue of
19 Dignity tracking its own transports. I'm hesitant to
20 quote you back to yourself when I don't have the
21 transcript in front of me, so I'm going to try and avoid
22 that.
23 But my understanding generally of your
24 testimony is that Dignity does not have a comprehensive --
25 comprehensive tracking ability -- or, it has not

1 comprehensively tracked its transports to date.
2 A. That is correct.
3 Q. So are you aware whether Dignity's policies have
4 anything on ambulance tracking?
5 A. I am not aware of the policies around tracking.
6 MS. HOFMEYR: Judge, can you put up ABC-30?
7 ALJ EIGENHEER: 30?
8 MS. HOFMEYR: Yes, please.
9 BY MS. HOFMEYR:
10 Q. So do you agree that the top of this document --
11 and that's a document we got either from the applicant or
12 from -- from Dignity in response to the subpoena. It says
13 "Dignity Health" "Hospital Policy." It's got an effective
14 date of October 21, 2015, right?
15 A. Yes.
16 Q. If we could go to page 11.
17 A. I'm sorry. Could you go back to the top page
18 real quick?
19 So this was St. Joseph's and Westgate and
20 the clinics. Okay. I just wanted to make sure it was
21 only those two facilities.
22 Q. So top of page 11, ABC30-0011, has "Chandler
23 Regional Medical Center and Mercy Gilbert Medical Center,
24 Policy and Procedure," right?
25 A. Yes.

1 Q. And then the subject is "Discharge
2 Transportation," correct?
3 A. Correct.
4 MS. HOFMEYR: If we can scroll down, Judge,
5 can you see there's a heading "Documentation"?
6 BY MS. HOFMEYR:
7 Q. And that paragraph reads, "Document the
8 transportation planning in EMR." Is that right?
9 A. That's what it says.
10 Q. And did you testify you were not aware of
11 policies relating to documentation? Right?
12 A. Yeah. Yeah. That's what I said.
13 Q. And it goes on, "This information will be used
14 when reconciling the invoices received from Ambulance
15 Services . . . ," right?
16 A. That's what it says.
17 Q. So documenting transportation is used here, I
18 presume, for reconciling invoice purposes, correct?
19 A. Correct.
20 Q. Do you know whether the personnel at these
21 facilities at the top of the page actually did keep these
22 records?
23 A. I don't know.
24 And this policy we're looking at is Chandler
25 and Mercy Gilbert only or -- It looked like there was two

1 different policies.
2 Q. The top of this page says Chandler Regional and
3 Mercy Gilbert.
4 A. Correct.
5 Q. It does reference an EMR system. Is the EMR
6 system different for each facility in Dignity?
7 A. It is not. Cerner is our EMR system.
8 Q. Dignity-wide?
9 A. Yes.
10 Q. So while we're on this policy document --
11 MS. HOFMEYR: Okay. Yes, you've got it.
12 It's right down at the bottom of the page.
13 BY MS. HOFMEYR:
14 Q. Number 3 -- "The assigned RN or Care Coordinator
15 will identify mode of transportation." Number 3 says,
16 "Ambulance Service (including stretcher van and wheelchair
17 van) . . . ."
18 So does that look to you like Dignity
19 personnel, at least at these two facilities, are being
20 advised that an ambulance service includes stretcher van
21 and wheelchair van?
22 A. It looks like that was included as part of the
23 definition.
24 Q. And when you put out your RFI in early 2016, do
25 you -- do you recall whether you differentiated between

1 stretcher van and ambulance service requiring a CON?
2 A. I don't recall that. I think we were looking for
3 more generalized information at that point.
4 MS. HOFMEYR: So, Judge, if we could pull it
5 up -- I think it's ABC-41.
6 BY MS. HOFMEYR:
7 Q. Would you agree on the front page it says
8 "Non-Emergency Patient Transportation Services," right?
9 A. Yes.
10 Q. If we go to page 2, the Objective, "The objective
11 of this RFI is to understand, evaluate, and identify one
12 or more non-emergency patient transportation
13 providers . . . ," right?
14 A. Yes.
15 Q. So the word "ambulance" is not mentioned in there
16 at all, right?
17 A. Correct.
18 Q. And, in fact, you sent this to ComTrans and you
19 knew ComTrans was a stretcher van service. Is that
20 correct?
21 A. No, I didn't know that. As I testified, I really
22 didn't know what everybody did. The whole purpose was a
23 request for information to find out what they did. The
24 committee had determined that ambulance-level services
25 were the greatest need for the organization at that time.

1 Q. Okay. So I see that in your contract with RBR,
2 you've asked RBR to perform stretcher van services. Do
3 you recall that?
4 A. As how defined? Convalescent or --
5 Q. Well, let's take a look.
6 MS. HOFMEYR: If we can pull up the
7 contract. 17 -- CA-17, Judge.
8 Judge, did I ask for the admission of ABC
9 policies, 30?
10 ALJ EIGENHEER: You did not.
11 MS. HOFMEYR: May I admit that?
12 ALJ EIGENHEER: Any objections?
13 MR. McGOLDRICK: No.
14 ALJ EIGENHEER: Is that a "no objection"
15 over there?
16 MR. MURPHY: No objection. I'm sorry, Your
17 Honor.
18 ALJ EIGENHEER: ABC-30 is admitted.
19 BY MS. HOFMEYR:
20 Q. So just to establish what this agreement is, can
21 you read it, or would you like the judge to expand it,
22 Mr. O'Malley?
23 A. I can read it.
24 Q. So we've got Ambulance Services Agreement. It's
25 made between RBR Management and Dignity Health. Can you

1 see that in the first line? Right?
2 A. Yes.
3 Q. So if we go down to Services Provided, the middle
4 of that page, it says, "Community shall provide the
5 following to Hospital to the extent authorized or
6 permitted under its CON." Tiny ii -- No. So let's start
7 with i. "Scheduled, urgent and non-urgent, Inter-facility
8 or Convalescent Ground ALS and BLS Ambulance Service
9 through Community-owned vehicles." Is that right?
10 A. That's what it says, yes.
11 Q. Do you have any reason to disagree with that?
12 A. With what it says?
13 Q. Yes. That that's what you contracted with RBR to
14 do.
15 A. This is not an executed agreement, right? But
16 this is -- this is the draft that's pending CON hearings.
17 We have to find out what's been approved under the CON.
18 Based on that, then we're going to -- we potentially have
19 to modify some of this.
20 MS. HOFMEYR: Judge, could you scroll to
21 page 5, please?
22 BY MS. HOFMEYR:
23 Q. This was signed just over a month ago, right?
24 A. Pending DHS approval. Pending DHS approval.
25 ALJ EIGENHEER: Just over 13 months ago.

1 MS. HOFMEYR: Sorry. A year ago.
2 BY MS. HOFMEYR:
3 Q. But it's an executed contract, right?
4 A. It's executed.
5 MS. HOFMEYR: So if we can go back up to
6 page 1.
7 BY MS. HOFMEYR:
8 Q. ii says, "scheduled and non-" --
9 MS. HOFMEYR: Are we there?
10 ALJ EIGENHEER: Yes.
11 BY MS. HOFMEYR:
12 Q. "Scheduled and non-urgent Inter-Facility or
13 Convalescent Wheelchair or Gurney Services ('Non-Ambulance
14 Services') . . . ," right?
15 A. Correct.
16 Q. And that would be through qualified
17 subcontractors or through Community-owned vehicles, right?
18 A. Correct.
19 Q. So do you know whether RBR has ever done these
20 wheelchair or gurney services anywhere else?
21 A. I'm not aware that they have.
22 Q. Are you aware it requires a different kind of
23 vehicle?
24 A. Yes, I am.
25 Q. Do you know if RBR owns any of those kind of

1 vehicles currently?
2 A. I do not know if they do. These are the same
3 services we contracted with AMR to provide, and they at
4 that time did not own those services either.
5 Q. So do you -- You don't know whether RBR actually
6 has experience providing those services, do you?
7 A. Correct.
8 Q. I'd like you to put your RBR hat back on. And
9 since you've been on the board of RBR in Nevada, do you --
10 do you have any idea how many ambulances RBR owns in
11 Nevada?
12 A. I think they have -- yes, they have 40, I think.
13 40 ambulances -- 20 ambulances. I think they have 20
14 ambulances.
15 Q. And do you know approximately how many ambulance
16 trips they perform each year in Nevada?
17 A. They do about -- about 90 to a hundred a day. So
18 you could extrapolate.
19 Q. I know you weren't on the board at the time, but
20 do you have any recollection of what their transport
21 volume was in 2015?
22 A. I don't know.
23 Q. I'd like you -- I'd like you to keep your RBR hat
24 on for my last set of questions.
25 I think I heard you testify earlier that the

1 board had the ability to get an outside auditor for it to
2 go over the financials of RBR, correct?
3 A. Correct.
4 Q. Have -- have you ever asked for that?
5 A. Not since I joined the board, but it has been
6 done in the past.
7 Q. Do you participate in the review and approval of
8 any budgets for RBR?
9 A. That would be -- Yes, I do.
10 Q. Is Rob Richardson involved with that budgeting --
11 A. Yes.
12 Q. -- process?
13 A. Yes.
14 Q. And I'm looking at -- I'm going to ask three
15 questions now; then I'm done.
16 At Rob Richardson's authority within RBR, is
17 he able to set up vendors?
18 A. Yes.
19 Q. Is he able to enter bills for vendors?
20 A. Yes.
21 Q. Is he able to make and sign checks to pay them?
22 A. Yes.
23 MS. HOFMEYR: That's it. Thank you, Judge.
24 ALJ EIGENHEER: Cross?
25 MR. RAY: Yes. Thank you.

1 CROSS-EXAMINATION
2 BY MR. RAY:
3 Q. On the home stretch, let's hope.
4 So, Mr. O'Malley, I'm Kevin Ray. I
5 represent the Bureau of EMS and Trauma Systems today.
6 And I think you were in the hearing room
7 when Linda Hunt gave you up as her ambulance guy. Is that
8 fair in a gen- -- in a general --
9 A. That's fair.
10 Q. -- fashion?
11 A. Yes.
12 Q. Okay. So I went back into my notes, and I know
13 we probably all asked you questions about timing, and I
14 just want to ask you a few myself.
15 So Linda Hunt testified that the ambulance
16 issue -- she became aware of it in November 2014, and it
17 was largely tied to the Arizona General Hospital facility
18 and the transpor- -- transportation needs between other
19 Dignity facilities in that group. Is that correct?
20 A. Yeah, she did say that.
21 Q. Okay.
22 A. Yes.
23 Q. When did you first learn about RBR in Nevada?
24 A. I would have been exposed to the fact that we had
25 that partnership probably soon after moving into my new

1 role, so that would have been in November of 2014. I was
2 not -- I did not have conversations with anybody about
3 that -- about Community Ambulance until in 2015 when I
4 started to investigate internal resources and solutions.
5 Q. Okay. And I think you have testified that your
6 first meeting directly with RBR in Las Vegas was May of
7 '15?
8 A. Yes, sir.
9 Q. So can you, using that as the outer boundary,
10 back up into the November '14 time frame and see if you
11 can fill that in a little bit for me?
12 A. So the next date that I recall is in March that I
13 had testified to earlier that I had a conversation with
14 the chief strategy officer and the chief financial officer
15 from Nevada and the same positions in Arizona -- the chief
16 strategy officer, chief financial officer -- to discuss
17 ambulance services and issues that they were experiencing,
18 how they responded, what did they do, how did they fix it.
19 That was a conversation in March.
20 Q. Okay.
21 A. So somewhere before March, you know, after
22 November, before lunch -- March, someone would have --
23 I've used up all my words for the day -- someone would
24 have said, you know, "We should be looking into this --
25 the issues that they've had in Nevada and how they

1 addressed them because they're similar to what we're doing
2 here."
3 Q. Okay. Now, at -- if we use that time frame,
4 November '14 -- sometime between November '14 and March of
5 '15, do you know if any of these three intervenors had a
6 CON at that time?
7 A. Did I know? I did not know.
8 Q. Okay. Okay. If, in fact, these CON holders did
9 not hold a CON during that time frame, do you know who the
10 ambulance provider or the primary ambulance provider was
11 for Dignity at that time?
12 A. I did not know.
13 Q. Okay.
14 A. Not until I started meeting with the internal
15 teams and learning more about the market and services.
16 Q. Okay. So when Linda Hunt first learns of the
17 ambulance issues impacting Dignity Arizona in November of
18 '14 -- I will tell you that these three ambulance
19 providers today did not have a CON then. You can -- you
20 can accept that or not. Assuming I'm correct, then the
21 issues she identified would have been a preexisting issue
22 for another ambulance provider. Fair enough?
23 A. Yes.
24 Q. Do you know, Mr. O'Malley, whether -- Well, do
25 you know whether stretcher vans and wheelchair vans are

1 considered ambulance transports?
2 A. I don't believe those are ambulance transports.
3 Q. You do not believe --
4 A. I do not believe they are.
5 Q. Okay. When Dignity issued the RFI in April of
6 2015, it was asking for general, nonemergent, nonimmediate
7 transportation services for its patients?
8 A. It was a request for information about those
9 services, yes, sir.
10 Q. Okay. And that request included both ambulance
11 services and nonambulance services. Is that correct?
12 A. Yes, sir.
13 Q. And the committee -- was it at the committee's
14 direction that you developed the RFI?
15 A. Yes.
16 Q. Okay. And the RFI included both types of
17 services, nonambulance and ambulance, correct?
18 A. Yes, sir.
19 Q. Okay. All right.
20 MR. RAY: Judge, can -- can you pull up
21 Community Ambulance 17? Actually --
22 ALJ EIGENHEER: It's right there.
23 MR. RAY: Okay. Thank you. Wow, look at
24 you. Well done.
25 All right. Can we go down to Section 29,

1 which I believe is page 10 of that document?
2 BY MR. RAY:
3 Q. And I'm sorry, Mr. O'Malley. You've seen this,
4 I'm sure, several times. Do you -- can you state what
5 this document is?
6 A. Section 29a discusses scope of work, specifically
7 response standards and response time commitments.
8 Q. Okay. And this was an agreement that was
9 executed between Dignity and RBR?
10 A. Yes, sir.
11 Q. Okay. And that is the proposed ambulance service
12 agreement for Arizona?
13 A. Yes, sir.
14 Q. Should they get a CON?
15 A. Yes, sir.
16 Q. Okay.
17 A. And assuming the CON supports it.
18 MR. RAY: Okay. Judge, is there any way to
19 enlarge the -- the box there? My old eyes are having
20 trouble. Thank you.
21 BY MR. RAY:
22 Q. So when I asked Linda Hunt if she could explain
23 those times, she deferred that to you, so I'm going to ask
24 you instead. Okay?
25 So I know they're labeled "Response Time

1 Standards." I will tell you from the Bureau's standpoint,
2 they are not response time standards, so we'll call them
3 that for purposes of this line of questioning. Okay?
4 So what's your understanding of a compliant
5 response time for an urgent transport -- ambulance
6 transport?
7 A. So based on the -- the condition of the patient,
8 as determined by the clinical providers and the physician
9 that are overseeing that patient's care, that, in their
10 opinion, the patient has an unstable condition and they
11 must have a response time by ambulance within 30 minutes.
12 Q. Okay. So that's -- that's what you would expect
13 on what you call an urgent transport?
14 A. Yes, sir.
15 Q. Okay. So how about work through non-urgent?
16 A. Non- -- non-urgent is -- in my opinion, it would
17 be a step lower where the patient does have a stable
18 condition, again as determined by the clinical team, and
19 that the pickup -- the ambulance pickup would occur within
20 60 minutes.
21 Q. So what does the last sentence of that mean?
22 A. "Pre-scheduled one hour in advance"?
23 Q. Yes, sir. How does that factor in? Does that
24 mean for non-urgents, they would have two hours just --
25 A. I know when I read that, that's exactly what I

1 would say, but that was not the intent.
2 Q. Okay.
3 A. The intent was it's one hour, and that 60 minutes
4 includes -- That's the one hour. That's -- that was what
5 it was supposed to mean, that these are scheduled and they
6 have to occur within one hour. That was supposed to be
7 the intent. But I read it now through different eyes and
8 it doesn't make sense. I'm sorry. I thought we took
9 this --
10 Q. You would agree with me that's confusing?
11 A. It is confusing. I thought we took this language
12 out of one of the other agreements we already had that was
13 approved, so I thought it was okay.
14 Q. So your -- your testimony is non-urgent ambulance
15 services are prescheduled, applying your -- your analysis
16 of it?
17 A. It's -- it's a -- it's a scheduled. It's "We
18 need to get somebody to come within the next hour. Can we
19 schedule an ambulance in the next hour?" The first one is
20 urgent, which is now.
21 Q. No, and I --
22 A. If you do it now, it's now. The scheduled part
23 of the second one is "We have an hour. When can you get
24 here within the next hour? Let's schedule it and put it
25 on the clock."

1 Q. So then how would you explain the third one which
2 is called a "Scheduled Ambulance."
3 A. So that's effectively a 90-minute -- 75 minutes'
4 advance notice. So instead of 60 minutes, it's 75 plus or
5 minus 15 minutes, so we would have up to 90 minutes to
6 schedule that transport.
7 Q. So how is a prescheduled different from a
8 scheduled? If we take out the time, just talking about
9 the concepts.
10 A. No, I agree the prescheduled doesn't make sense
11 to me. I'm sorry for the confusion.
12 Q. So is it your testimony that it would be
13 Dignity's expectation that for all non-urgent transports,
14 those would be picked up at the requesting facility within
15 one hour --
16 A. Yes.
17 Q. -- of the call?
18 A. Correct.
19 Q. And when would you use scheduled? The -- the
20 90-minute, when would that occur?
21 A. Scheduled would be we are -- we have a patient
22 that's available for discharge. We plan on discharging
23 them at 2:00 p.m. We would like to schedule a transfer
24 pickup at 2:00 p.m.
25 Q. That would be an example --

1 A. Yeah.
2 Q. -- you're giving me?
3 A. Yeah, for the --
4 Q. That example does -- example does -- language
5 doesn't exist in there.
6 A. It doesn't.
7 Q. Would you agree?
8 A. It does not. I agree.
9 Q. One of the statements you made when -- I believe
10 it was Ms. Hofmeyr that asked you a question about
11 focusing on the need of Dignity, that -- that the
12 applicant would be the type of ambulance service that
13 would focus on the needs of Dignity. Do you recall that?
14 A. Yes.
15 Q. Okay. What does that mean, focus on your needs?
16 Does that mean within whatever that parameter means, they
17 will be there, or does it mean something else?
18 A. It means that and more. The needs are
19 consistency, reliability. It's creating a higher level of
20 integration. It's having a greater ability to have
21 transparency in what's happening. Needs are much, much
22 more than this. In fact, in my mind, this was really a
23 starting point. "This" meaning this agreement: these
24 response times, these standards. I don't -- Today I
25 still don't know exactly how I want to measure the success

1 of this relationship going forward. I want to look at
2 things a little bit differently. I would love to have
3 patient experience built into here and satisfaction
4 scores. There are other things that I would like to
5 continue to build into this relationship over time so that
6 the needs that we have are looking at it from the
7 patient's perspective, from a healthcare system that's
8 trying to better coordinate managed care.
9 Q. Okay. And -- and I think your prior testimony
10 mentioned one of the benefits of this applicant was
11 ownership by Dignity, oversight by Dignity, fiduciary
12 relationship with Dignity. Do you recall that testimony?
13 A. Yes.
14 Q. Could -- could meeting Dignity's needs occur by
15 any independent, non-owned -- non-ownership issue -- could
16 a stand-alone ambulance company for profit that is not
17 owned in any part by Dignity meet those needs you've just
18 explained?
19 A. Not with one that's in the Arizona market today.
20 Q. Okay. Mr. O'Malley, you identified the terms and
21 they are terms of art that I'd like you to do your best to
22 put those on the record based on your understanding. You
23 talked about, early in your direct, bottleneck and
24 throughput issues. Are -- are those two different and
25 distinct issues, or do they mean the same thing?

1 A. I -- I think they're different. I think
2 bottlenecking does lead to throughput issues.
3 Bottlenecking is more looking at a system of care and a
4 stoppage in one area causes delays or backlogs in another
5 area.
6 Throughput can simply mean -- without a
7 bottleneck, it can simply mean that you are looking for a
8 more efficient process. You're looking at moving the
9 patient quicker into a different level of care, into a
10 different facility, in another organization. It could
11 mean, you know, creating a much more appropriate average
12 length of stay so a patient doesn't have to stay another
13 night --
14 Q. So --
15 A. -- because we can't get a ambulance transport.
16 Q. Would you agree with me that -- that even
17 excluding ambulance service from the equation, a
18 healthcare system like Dignity would still have bottleneck
19 and throughput issues unrelated to patient transportation?
20 A. This is only one piece of the puzzle, yes, sir.
21 Q. Okay.
22 A. Yes.
23 Q. And I -- I apologize, Mr. O'Malley. I'm flipping
24 through a number of questions that other counsel have
25 already asked you.

1 A. That's okay. Take your time.
2 Q. I want to focus on your meeting invitation to
3 Neal Thomas of ABC in -- I believe it was March --
4 March 1st of 2017.
5 A. Yes, sir.
6 Q. Your testimony is, I believe, that the purpose of
7 the meeting was to see if ABC Ambulance would be
8 interested in being a backup ambulance provider. Is that
9 correct?
10 A. That was really one of the possible relationship
11 options on the table. What we were looking at was trying
12 to figure out how could we build a relationship where
13 we're collaborating to work together to create a better
14 network of ambulance solutions.
15 Q. Well -- but you brought your preferred or your
16 chosen ambulance --
17 A. Right.
18 Q. -- provider --
19 A. Yeah.
20 Q. -- proposed provider to that meeting. So what
21 were the other options other than "When they're not
22 available, you would be our choice"?
23 A. As an example, what if we carved out all
24 behavioral transports and had an exclusive relationship
25 for all behavioral transports? What we -- what we don't

1 know is what we don't know. We -- we didn't sit down and
2 really get into that next level. So the intent of the
3 meeting was to build collaboration with an existing
4 provider.
5 Q. Okay. Let's talk about behavioral health
6 transports. Those come out of Mercy Care, correct?
7 A. I believe Mercy Care is the responsible payer --
8 Q. Yeah.
9 A. -- for many of them.
10 Q. I believe Ms. Hunt testified that Dignity has no
11 voice in who they call for those transports.
12 A. Correct.
13 Q. Okay. But you are now saying that is something
14 you were perhaps going to offer Mr. Thomas.
15 A. Let me clarify. I gave that as an example of
16 something we could talk about but really didn't get into
17 very much. The -- the clarification I need to add is that
18 it's the facilities that are requesting the ambulance
19 transports. So with my Dignity Health hat on, I could
20 have sat there and said, "Let's talk about how the
21 behavioral health transports coming out of Dignity Health
22 facilities could be your patients. You could help us with
23 those." That's a conversation Dignity Health could have.
24 Mercy Care plan is the payer who will adjudicate the
25 claims and -- and financial side of it.

1 Q. Recognizing that Mr. Thomas may already do a
2 majority of those transports out of the behavioral health
3 system, correct?
4 A. That's what I've heard. I don't have the data
5 for that, sir.
6 Q. Okay. Mr. O'Malley, does -- does Dignity track
7 nonambulance transports, pickups, deliveries, timing,
8 things like that?
9 A. I'm not aware --
10 Q. I know you already said you don't track -- "you"
11 being Dignity -- you don't track ambulance transports.
12 A. Right. I'm not aware of any tracking on the
13 other transport levels -- transportation levels.
14 Q. Okay. And is that an initiative that you are
15 interested in doing at this point?
16 A. Yeah, our number one focus -- far ahead of number
17 two, our number one focus is ambulance, the interfacility
18 transports.
19 Q. Do you know, from a Dignity perspective, what the
20 breakdown would be if we -- If we're talking about the
21 totality of transportation services, how many would be
22 ambulance versus how many would be nonambulance?
23 A. I don't know.
24 Q. Do you know whether there are more ambulance
25 transports than nonambulance?

1 A. I don't know.
2 Q. You don't know?
3 Mr. O'Malley, are you aware that the
4 application filed does not request response times in your
5 vernacular, arrival times in my vernacular, for the
6 Community Ambulance?
7 A. Yes, sir, I'm aware of that.
8 Q. Okay. Happily I think I only have one more area
9 to ask you about.
10 So the 11,300 some-odd transports that
11 appear on the application ARCR, I think there's -- between
12 you -- your testimony and Ms. Hunt's, there's an
13 understanding those would be Dignity facility transports
14 year one.
15 A. Yes. That number came out of the numbers that
16 were Dignity Health facility transports only.
17 Q. Okay. The applicant did not limit its
18 application service model to serving only Dignity
19 facilities. So let's assume they get a CON -- "they"
20 being Community Ambulance -- it will be a full-service,
21 non-911 service model, and Community Ambulance gets a call
22 from a non-Dignity facility for a transport. What would
23 Dignity's expectations be for that ambulance response?
24 A. Dignity Health hat on?
25 Q. Put your hat on.

1 A. So my Dignity Health hat on, I would say not at
2 the expense of a Dignity Health level of performance that
3 we've agreed to.
4 Q. Okay.
5 A. You know, and then at the board level, I put --
6 put that hat on and I would say the same thing. You know,
7 we need to make sure we're not compromising the commitment
8 we have made to Dignity Health.
9 MR. RAY: Thank you very much, Mr. O'Malley.
10 THE WITNESS: Thank you.
11 ALJ EIGENHEER: Any direct?
12 MR. MURPHY: Just a few questions.
13 Can you pull up CA-17, Your Honor? Excuse
14 me. If we could go just right to the spot where Mr. Ray
15 was, Section 29.
16
17 REDIRECT EXAMINATION
18 BY MR. MURPHY:
19 Q. What ambulance company's language did you borrow
20 from for this response time standards language?
21 A. I believe it was an AMR contract.
22 Q. Why didn't Dignity Health or Community Ambulance,
23 either hat you want to wear, do a needs assessment before
24 filing an application?
25 A. Usually when you do a needs assessment, you're

1 evaluating a market and you're looking at demand, supply.
2 You're looking at growth. You're looking at all of those
3 factors. I am the primary customer. I know exactly --
4 Well, I know what I've been told our transports are. I
5 know what our needs are. I've had input from across
6 Dignity Health and some of our partners. I know what
7 their needs are. As I have advised Community Ambulance
8 throughout this process, my job was to say, "I'm -- I'm
9 the voice of the customer. It is my needs that I can
10 share very clearly with you." So from a needs assessment
11 standpoint, I don't know how you can get better
12 information without having competitor data.
13 Q. I think you testified that your hospital system
14 doesn't track ambulance data. And do you know why your
15 hospital can't track or doesn't track -- excuse me -- does
16 not track hospital -- or, ambulance data?
17 A. It may be something you want to ask some of the
18 clinical team members as well. Our clinical team members
19 are extremely busy. They're focusing on patient care.
20 They're moving very quickly through their -- their
21 process. To stop and fill out a log and to enter that,
22 the details would be additional, and it would potentially
23 take away from patient care.
24 Secondly, the information that we have is
25 only a part of the data set that you would truly need.

1 Who has the information are the ambulance companies. If
2 we pick up the phone and call an ambulance company, we
3 know the time of the phone call. What we don't know is
4 what's happening next. We don't know when something was
5 dispatched -- when the ambulance was dispatched. We don't
6 know when the ambulance's wheels stopped out front of your
7 organization. We don't know how long it took to get out
8 of the ambulance and up to the unit or the floor or
9 whatever bedside they needed to be. There are so many
10 different elements of that process that we would not know.
11 We would not know if we never -- the ambulance never
12 showed up where they went. We would never know if they
13 were called off. We would never know if they called
14 somebody else, when they called somebody else, what the
15 time of that call was, and then what their information
16 was. Whatever we did would only be a part of the broader
17 puzzle, if you will, of data. That's why we wanted to get
18 reports, why we wanted to get the information out of the
19 existing CON providers.
20 Q. One -- one last question. Why -- This came up
21 during cross-examination by AMR. Why can't -- Putting
22 your Community Ambulance hat on, why can't Community
23 Ambulance allege that AMR's performance was substandard?
24 A. Because they don't have the data.
25 Q. Because Community Ambulance doesn't have the

1 data?
2 A. Community Ambulance doesn't have the data.
3 MR. MURPHY: No further questions.
4 MR. McGOLDRICK: Your Honor, I've got a
5 couple quick follow-ups, if I may.
6 ALJ EIGENHEER: Okay.
7
8 RECROSS-EXAMINATION
9 BY MR. McGOLDRICK:
10 Q. Mr. O'Malley, on a particular exhibit Ms. Hofmeyr
11 showed you regarding discharge protocol for your
12 hospitals -- Do you remember that?
13 A. The policy and procedure?
14 Q. Yes, sir.
15 A. Yes, sir.
16 Q. In your documentation, it says, "Document
17 transportation planning in EMR." I just want to make sure
18 is EMR electronic medical records?
19 A. Yes, sir.
20 Q. And so then it says, "This information will be
21 used when reconciling the invoices received from the
22 Ambulance Services or other transportation service."
23 A. Yes, sir.
24 Q. Is the electronic medical records system that
25 Dignity has integrated vis-à-vis all of the Dignity

1 facilities?
2 A. Dignity Health wholly owned hospitals are on the
3 electronic medical record.
4 Q. So this data is already entered into your system,
5 correct?
6 A. According to that policy, it is supposed to be.
7 And what I testified to earlier, if it's a free-form
8 field, they're not going to be able to pull that
9 information out. So I don't -- I was unable to get that
10 information extrapolated from.
11 Q. But when you say "free-form field," do you mean
12 in whatever -- you're typing?
13 A. Yes, sir. That means you could just type
14 whatever you want as opposed to click ambulance, click
15 Rural/Metro, or click where it hard-codes the data
16 elements and defines them so you can query and pull data
17 sets. Free-form field is -- You know, as an example -- I
18 don't know if this is what it is or not, but it would be
19 transportation disposition of patient, "Patient was picked
20 up." "We called AMR." You know, then you're just typing
21 general information, so there's no way to run a report
22 that says 450 patients had this box checked -- checked.
23 You would have to literally look at every single medical
24 record to find which ones had ambulance in that note.
25 Q. So it's your testimony that, although you've got

1 electronic medical records that are integrated throughout
2 all your facilities, you don't have the ability to extract
3 that data to provide you to evaluate your use of ambulance
4 services?
5 A. My testimony was --
6 Q. Is that your testimony?
7 A. I'm happy to clarify my testimony.
8 Q. Okay.
9 A. My testimony was that I requested from our IT
10 systems teams and from our clinical teams a data set of
11 ambulance transportation information, and I was unable to
12 get that. They were unable to provide it. I can't tell
13 you why.
14 MR. McGOLDRICK: Thank you.
15 ALJ EIGENHEER: Okay. I have two quick
16 questions.
17
18 EXAMINATION
19 BY ALJ EIGENHEER:
20 Q. I believe you said the -- you came up with the
21 11,000-plus number of transports?
22 A. Yes, ma'am.
23 Q. And that was pulled from one quarter's worth of
24 data from AMR?
25 A. Yes, ma'am.

1 Q. Do you know what quarter that was?
2 A. It was Q4 data from 2015.
3 Q. And Q4 would be?
4 A. Calendar -- October, November, December.
5 Q. And I'm assuming, being here in Arizona, that
6 your -- that Dignity Health experiences fluctuations in
7 number of patients based on snowbirds.
8 A. Yes.
9 Q. Okay. So the -- that information you had would
10 be slightly elevated during that time period?
11 A. It -- it would be.
12 Q. And you said you took that data times four to
13 come up with a yearly worth of --
14 A. That's exactly right. It was the best
15 information I had.
16 ALJ EIGENHEER: Okay. Thank you very much.
17 THE WITNESS: Thank you.
18 ALJ EIGENHEER: You may be excused.
19 MR. MURPHY: I just wanted to make a
20 clarification. I think that was annualized from that
21 quarter, not total transports from that whole quarter.
22 MS. FICKBOHM: I'm sorry. Are you
23 testifying?
24 MR. MURPHY: No. I'm sorry. I just wanted
25 to have a clarifying question about whether or not it was

1 annualized for that quarter -- those 11,000 transports.
2 ALJ EIGENHEER: No, that he extracted the
3 11,000 transports from that quarter. Took that quarter
4 times four, and that's how he got 11,000-plus. That was
5 my understanding of his testimony.
6 MR. MURPHY: Okay.
7 ALJ EIGENHEER: Thank you.
8 Next witness?
9 MR. MURPHY: Delores -- Delores Kells, Your
10 Honor.
11 ALJ EIGENHEER: Does anybody need a recess?
12 MS. FICKBOHM: Your Honor, I do have an
13 objection for the record.
14 ALJ EIGENHEER: On?
15 MS. FICKBOHM: On this witness and a series
16 of other witnesses that they're going to call this
17 afternoon.
18 ALJ EIGENHEER: Okay. Let's take just a
19 very short recess. Go off the record at this time.
20 MR. MURPHY: If I -- if I could, Your Honor?
21 ALJ EIGENHEER: Sorry.
22 MR. MURPHY: Delores Kells -- we arranged
23 the schedule because she's going to be gone starting
24 tomorrow on vacation, so . . .
25 ALJ EIGENHEER: I'm talking five minutes.

1 That's all. I'm not even going downstairs.
2 (A recess ensued from 2:12 p.m. to
3 2:19 p.m.)
4 ALJ EIGENHEER: Okay. We are back on the
5 record.
6 Your next witness was?
7 MR. MURPHY: Delores Kells, Your Honor.
8 ALJ EIGENHEER: Okay.
9 MS. FICKBOHM: And -- and, Your Honor, I
10 just wanted to make an objection for the record as it
11 relates to this witness and three other witnesses that
12 apparently are intended to be called this afternoon:
13 Rebecca Haas, Brandon Hestand, and Matthew Karger. And I
14 won't go into all the detail I put in my prehearing memo,
15 but we had a status conference with you in February. And
16 I, first, want to back up and say when this application
17 was filed, it was purely based upon Dignity's desire to
18 have a company that it's the majority interest holder in
19 be its, quote, unquote, fully integrated provider. That
20 was this application in June of 2016. That application
21 was amended through a process with the Bureau. That was
22 the application at the time that the notice of hearing was
23 issued. That was that application at the time that we had
24 the status conference with you in February of 2018. You
25 required the applicant to do its witness and exhibit

1 disclosures in April. We received those. Not one
2 document was provided calling any of the existing CON
3 holders' services into question. Mr. Hestand and
4 Ms. Kells were identified to testify about some negative
5 patient experiences in very general terms. No dates, no
6 patients, no provider that was it was related to, nothing
7 about whether it was 911, et cetera.
8 On September 19th, witnesses Rebecca Haas
9 and Matthew Karger were added, and -- and we received some
10 additional documentation related to these witnesses'
11 testimonies, but it wasn't until after October 4th, which
12 was weeks after the final exhibit and witness disclosure
13 that the parties had already pushed off a week by
14 agreement, that we got hundreds of pages of emails
15 involving these witnesses that I expect purportedly relate
16 to the testimonies that are going to be given. The sort
17 of excuse that was offered was "Oh, we didn't get these
18 from Dignity until the day the final witness and exhibit
19 disclosures were due, and then we had to redact patient
20 information." There was a minimal amount of patient
21 information that needed to be redacted, and that excuse
22 was totally fabricated, Your Honor. Dignity Health is the
23 majority owner of that company. If it had documentation
24 of supposed concerns that it had, it could have
25 collaborated with RBR to have a protective order issued,

1 to have a subpoena by you issued in February, March,
2 April, May, and, in fact, they did subpoena the records on
3 the last day for requesting subpoenas. You signed the
4 subpoenas in June. And ultimately, Dignity took the
5 position "Well, since the judge signed the subpoena, we
6 can give it to you," but they hold it until the last day
7 for witness and exhibit disclosures. I mean, this is
8 sandbagging at its worst.
9 And so I object to them being able to use
10 evidence that you required that they disclose in April of
11 2018 when they're going to talk about things 2015, 2016,
12 2017, early 2018. There was no reason for them to, like,
13 make all of the intervenors scramble and pour through
14 hundreds, if not thousands, of pages at the very last
15 minute -- minute.
16 And -- and I also want to point out that
17 we're going to be talking about a handful of, oh, this was
18 bad, this wasn't good, these people were rude, I asked for
19 this, I didn't get that. When in 2016 we've got over
20 18,000 transfers and -- and those aren't -- don't just
21 include calls for transfers, but transfers from the
22 Dignity system. But in 2017, almost 19,000. In 2018,
23 annualized 21,000. A few idiosyncratic things here and
24 there do not make a deficient system. And if Dignity
25 Health thought there was a problem with any of the

1 existing CON holders, there's the place you take those
2 concerns right there. You take them to the Department of
3 Health Services. Or when you file your application in
4 2016, if you think the system is broken, you make that
5 statement up front on your application and say that's what
6 you're going to do, which they didn't do. So I'm just
7 objecting in advance.
8 And I want to add in that Rebecca Haas is
9 the head of the urgent care clinic in Maricopa, which is
10 in Pinal County, and a certain amount of information that
11 Ms. Kells apparently is going to testify about also
12 relates to Urgent Care-Maricopa. The excuse you've heard
13 from counsel for RBR is "Oh, AMR said that they were going
14 to bring up negative impact in -- in rural Pinal County."
15 When we made our initial witness and exhibit
16 disclosure, we had no idea what their case in chief was
17 going to be because their initial witness and exhibit
18 disclosure was skeletal and there was nothing in their
19 application calling AMR services into question. So we
20 listed possible topics, but them basically doing rebuttal
21 during their case in chief is ill-placed. We're listening
22 to their case in chief. We're going to go back and -- and
23 deal with it and put in our case in chief, and if they
24 think that at that point in time they need to bring in
25 information about Urgent Care-Maricopa because we have

1 somehow raised that issue during this hearing, that's the
2 point you do it, then. You don't take up the time of the
3 hearing in the first week anticipating what AMR is going
4 to do, when, in fact, they might not even do it. I don't
5 see how Urgent Care-Maricopa has anything to do with this
6 since RBR and its majority interest owner, Dignity Health,
7 made a conscious decision not to apply for authority to
8 provide services in Pinal County.
9 That's my objection for the record.
10 ALJ EIGENHEER: Okay. Response?
11 MR. MURPHY: First and foremost, the
12 documents are relevant. The emails are relevant. The
13 witnesses are absolutely relevant. You've heard testimony
14 for two days from Dignity Health representatives -- mainly
15 Linda Hunt and primarily Jeff O'Malley -- about reports
16 and problems with their primary provider and pretty much
17 sole provider AMR. So no doubt that these emails and the
18 testimony from these folks is relevant.
19 And I'll set Rebecca Haas aside and talk
20 about her separately.
21 As to the document dump, again,
22 fabrication -- fabricating stories, I take issue with
23 that. The initial disclosure did include Hestand and
24 Kells, and it did describe that they were going to talk
25 about problems they had with AMR service.

1 It is true that AMR's initial disclosure
2 included discussions about adjacent rural areas and the
3 impact that the CON being awarded would have on their
4 ability to service those areas.
5 Rebecca Haas is in the city of Maricopa and
6 uses AMR and has stories about AMR. And importantly,
7 those -- those patients in Maricopa -- the city of
8 Maricopa go one of two places -- the testimony will likely
9 be -- Casa Grande or into Maricopa County. And I've got
10 some legal arguments that I would like to make that I
11 raised on the first day of hearing before we were on the
12 record.
13 And Matt Karger is someone who we only just
14 learned about -- well, now it's probably three weeks ago,
15 four weeks ago. He is an AGH employee. He was originally
16 at AGH Laveen, moved to Mesa, and now he's under the
17 Dignity umbrella. Somebody we just learned about and we
18 disclosed him on the -- with our final exhibit and witness
19 list.
20 As for the documents -- So these are all
21 emails that we're going to use that are all in AMR's
22 possession. So it is difficult to understand the argument
23 that "they're sandbagging" when these are all documents
24 that they've had in their possession since as early as
25 2015, 2016, 2017. These are all documents that show

1 problems with AMR service from Dignity Health's
2 perspective. They were dissatisfied with AMR service, and
3 these emails are evidence of that dissatisfaction. So
4 subpoenas were issued. You signed subpoenas, including
5 subpoenas to AMR. AMR didn't produce any of these emails
6 to Community Ambulance. Fearing that was the case, we
7 also subpoenaed Dignity Health. Now, I have no control
8 over what Dignity Health provides Community Ambulance or
9 doesn't provide Community Ambulance. Dignity Health has
10 an obligation to maintain confidentiality of patient
11 records that I don't have. I don't have that authority to
12 review their documents on their behalf or redact for them.
13 I didn't do the redactions. Dignity Health did the
14 redactions. So the documents that were redacted and
15 disclosed with our final exhibit list -- and I -- and I
16 may be getting it wrong -- were disclosed October 4th. We
17 identified documents that were received from Dignity
18 Health late in the game and disclosed when we could.
19 MS. FICKBOHM: October 4th.
20 MR. MURPHY: Yeah, disclosed seven new
21 witnesses and about a hundred new exhibits on the final
22 disclosure day, right. October 2nd, we removed Mark
23 Burdick and broke out all of the Dignity emails. We broke
24 them out. We went through that process to identify each
25 and every email: again, all emails that were in the

1 possession of AMR and that they didn't produce and we had
2 to go get from Dignity Health.
3 And I just have a difficult time with this
4 argument also because the reason that AMR moved to
5 intervene in this action in the first place was because
6 they had information that they wanted to provide to the
7 Director and to the Judge with respect to this CON and
8 information about complaints from Dignity Health hospital
9 system, complaining about the service. And these are just
10 examples of complaints about the service. It's something
11 that's relevant to this action.
12 Another -- If we could turn to the why
13 Rebecca Haas and the Maricopa -- the city of Maricopa --
14 let's just say Pinal County is relevant to this action,
15 and I know we've looked at the guidance document, and the
16 guidance document tells us that the CON -- the Director
17 should take into consideration an assessment -- or,
18 requires an assessment. It's page 3 of the guidance
19 document, for reference. ". . . the impact of a
20 successful application on individuals living within and in
21 rural . . . areas adjacent to -- adjacent to the service
22 area . . . ."
23 The service area at issue in this CON
24 hearing is Maricopa County. Pinal County is adjacent to
25 the service area. Patients that go to the Maricopa -- the

1 city of Maricopa urgent care in Pinal County, as I
2 mentioned, many times travel into Maricopa and receive
3 treatment at higher levels of care, like Chandler Regional
4 Medical Center. And my understanding is that urgent care
5 center out there, at least now for the time being, is --
6 is likely the highest level of care in the city of
7 Maricopa. It's an adjacent area. It's something the
8 Director -- Director's guidance says "I would like to
9 consider when considering a CON."
10 The director's guidance, that same page,
11 also says financial and operational impact of a successful
12 CON on ability of existing CON holders to serve residents
13 residing in rural areas adjacent to the CON service area.
14 Same issue again. Pinal County being an adjacent area.
15 And I believe we have maps that we've disclosed that
16 identified urban areas or -- urban areas, rural areas,
17 urban clusters within rural areas. The public necessity
18 requirements, R9-25-903(3) [sic], requires the assessment
19 of the geographic distribution of health care institutions
20 within and surrounding the service area. Surrounding the
21 service area is Pinal County.
22 There's another document that I want to
23 raise for your attention on this issue. And that is
24 something with respect to turning calls to other
25 providers. R9-25-907, "A certificate holder may also

1 provide emergency services or transport within" -- I'm
2 sorry. R9-25-907(3)(a) and (b). (a) says, "According to
3 a back-up agreement or mutual aid agreement" -- Excuse
4 me. "A certificate holder may also provide emergency
5 medical services or transport within an area other than
6 the service area identified in the certificate holder's
7 certificate of necessity: According to a back-up
8 agreement or mutual aid agreement with the ambulance
9 service that has a certificate of necessity in that
10 service area."
11 AMR can have a backup agreement, for
12 example, with Maricopa Ambulance, who does not have a
13 certificate in Pinal County, to help relieve the burden
14 and help move patients living in a rural area into
15 Maricopa County, into Chandler Regional Medical Center, as
16 an example.
17 "When the service area -- or, When the
18 'service area's dispatch' (the dispatch center for the
19 service area in which the emergency medical services or
20 transport would be provided)," Pinal County, "authorizes
21 the ground ambulance of a certificate holder that does not
22 have a certificate of necessity in that service area to
23 provide the emergency medical services or transport."
24 The reading of that would suggest that it's
25 absolutely relevant if AMR is unable to provide timely

1 urgent and non-urgent transport services in an adjacent
2 service area, that -- and isn't calling backup -- isn't
3 calling for backup from other CON holders, who may not be
4 in Pinal County but are in Maricopa, for example -- and
5 I'll use Maricopa Ambulance as an example -- then that's
6 something that the Director should know about, hear about,
7 and explore in terms of whether or not there's a need and
8 whether or not a CON should be awarded to Community
9 Ambulance to help relieve that need.
10 The only final point I'll make on the
11 document issue or underscore is there was -- there was a
12 protective order that was bandied about amongst the
13 intervenors and applicant, and Maricopa Ambulance and
14 Community Ambulance agreed to the proposed terms -- the
15 terms proposed by Scott Bennett. He's a lawyer -- the
16 lawyer that represents Dignity Health with Andrew Gordon.
17 AMR and ABC wouldn't agree to that agreement, and that's
18 their prerogative. But it delayed Dignity Health's
19 ability to produce documents that contained PHI. And we
20 did not get those documents until way late in the game and
21 we produced them after we got them. And did it fall after
22 the deadline? Sure. But again, these are not documents
23 that are a surprise to AMR. The documents that you're
24 going to see under direct testimony of Rebecca Haas; of
25 Delores Kells; Brandon Hestand, who works at CRMC, these

1 are all emails with AMR that they have that they never
2 produced subject to the subpoena to us, which they should
3 have done.
4 MS. FICKBOHM: Your Honor, he's said a
5 number of things that are flat-out wrong.
6 I'm going to start with Urgent Care-Maricopa
7 is 50 miles away from the Maricopa County-Pinal County
8 border. That's not adjacent. That's number one.
9 Number two, my clients receive hundreds of
10 emails on a daily basis from all of the different people
11 they work with in Maricopa County and elsewhere. A lot of
12 that is back-and-forth with their clients -- "This was
13 great," "This could have been better," "What about this?"
14 "What about this?" "What about this?" -- requiring my
15 clients to search through millions of emails that they
16 weren't saving and categorying [sic] -- they weren't like
17 Jeff O'Malley, like, plotting this since 2015 asking
18 everybody to save everything bad. This was not the scope
19 of the application when they did their initial exhibit and
20 witness disclosure, and it wasn't the scope of the
21 application when they received -- when the applicant filed
22 its request for subpoena duces tecum. And I could go on
23 and on about why that subpoena duces tecum, which
24 required, like, looking back even to 2013 or the beginning
25 of time, was too burdensome to ever be able to -- to

1 respond to.
2 But the other thing that he's saying that's
3 flat-out wrong is it was AMR's delay that caused them to
4 not be able to get that information. There was no reason
5 that they had to wait. If they really had to subpoena the
6 information from the majority interest holder, they could
7 have done that the day after the notice of hearing was
8 issued. They could have done it the day after we had the
9 status conference with you. They didn't have to wait
10 until May of 2018 to file that subpoena on the last
11 possible day. And they could have agreed with Dignity at
12 any point in time to do a protective order, and I did
13 not -- I was the one handling the protective order
14 discussions. I did not refuse, on behalf of AMR, to agree
15 to a protective order. I agreed -- I didn't like it the
16 way that Scott Bennett had written it and I responded and
17 told them that "We'll agree if you phrase it this way,"
18 because I don't want the presumption to be you have to
19 give this information. I wanted there to still be some
20 discretion. And Scott sat on it for over a month because
21 he was really busy, like, this year than he had ever been,
22 I think he told me. And he didn't accept my language.
23 And by then ABC had refused, saying, "We're not going to
24 sign this." And Scott said, "We don't need you to agree
25 anyway. We can give it to Ronna. And since -- since the

1 judge issued the subpoena, then we can give it to them
2 anyway." Then they held it to the last minute. To say
3 that AMR, like, basically had these emails that they're
4 going to bring in sitting in a pile on somebody's desk is
5 utter fantasy. Hundreds of emails every day: good, bad,
6 indifferent, back and forth, back and forth.
7 And the notion that if they were really
8 concerned about the service in Pinal County, they wouldn't
9 include it in their CON authority and, instead, they would
10 come in with this kind of weird theory that, like, "Oh,
11 AMR, we'll get a CON and we can back you up to cover our
12 facility in Pinal County" -- that isn't really adjacent;
13 it's 50 miles away -- I mean, that just borders on absurd.
14 But that's all I have to say in response.
15 MR. MURPHY: Just a point of
16 clarification --
17 MS. FICKBOHM: It's my motion. Are we going
18 to go back and forth? Is that the way we're going to do
19 this?
20 ALJ EIGENHEER: No.
21 MR. MURPHY: I'm sorry.
22 ALJ EIGENHEER: I believe the Department --
23 MR. RAY: Yes. From the Bureau's
24 standpoint, as I mentioned at the start of the hearing,
25 Pinal County -- the applicant didn't apply for Pinal

1 County. Could have, but didn't. It is, from the Bureau's
2 perspective, a separate ambulance system distinct and
3 apart from the Maricopa County ambulance system. I have
4 significant relevance -- relevancy concerns about any
5 evidence relating to pickups from the Maricopa urgent care
6 center. I'm willing to narrow that objection if and when
7 there's a particular question and an answer that would
8 have an impact on the applicant's Maricopa County-based
9 CON. I'm not seeing it on its face, but I offer that.
10 MR. BELANGER: Judge, I'm sorry. I realize
11 this is really not my battle, but as a technical matter --
12 as a technical matter, because we did have a lot of
13 discussions regarding subpoenas, the regs specifically say
14 that if a person subpoenaing a document can obtain it
15 elsewhere, the subpoena should be denied. And
16 particularly, in this instance with Dignity and RBR having
17 a symbiotic co-ownership relationship, I think as a matter
18 of regulation, the subpoena would have been denied because
19 it's clear that Community Ambulance could have obtained
20 the information it sought elsewhere. It's a technical
21 objection, but I -- but part of my goal for the last two
22 and a half years when we have appeared in front of you is
23 to try to make these hearings a little bit more concise
24 and a little bit more manageable. And I think that's one
25 way to do it.

1 MR. MURPHY: May I respond, Your Honor?
2 ALJ EIGENHEER: Yes. And you may answer my
3 question. When was the joint prosecution agreement
4 entered into?
5 MR. MURPHY: I would have to look. Probably
6 around the time of the underlying litigation in Superior
7 Court.
8 ALJ EIGENHEER: More than a year ago?
9 MR. MURPHY: Probably, yes.
10 If I can address that issue?
11 ALJ EIGENHEER: Sure.
12 MR. MURPHY: There's -- there's no question
13 that Community Ambulance was required to subpoena those
14 documents in particular because of the private health
15 information that was included in those documents. I
16 didn't -- I couldn't just get the documents from Dignity
17 Health. They are separate entities for that purpose.
18 ALJ EIGENHEER: Okay. I also have some
19 serious concerns about the Urgent Care-Maricopa as far
20 as -- just because the regulations mention an area
21 surrounding the service area doesn't mean that everything
22 about that should come into this hearing.
23 As far as the current witness, I mean, I
24 understand that now there are claims as to issues with the
25 providers of the services. While that may not have been

1 raised in the application or a variety of points prior to
2 this, it does appear relevant. The timing of such
3 disclosures would certainly be taken into account as to
4 the weight to be given that, the intervenors' ability to
5 respond to those claims, but I will allow it at this
6 point.
7 So with that, if you would please raise your
8 right hand.
9
10 DELORES KELLS,
11 called as a witness on behalf of RBR Management, LLC,
12 herein, having been first duly sworn by the Administrative
13 Law Judge to speak the truth and nothing but the truth,
14 was examined and testified as follows:
15
16 ALJ EIGENHEER: Would you please state your
17 name, spelling it for the record.
18 THE WITNESS: Delores Kells. Delores Kells,
19 D-e-l-o-r-e-s K-e-l-l-s.
20 ALJ EIGENHEER: All right. You're probably
21 going to need to move that a little bit closer so everyone
22 can hear.
23 Please proceed.
24 MR. MURPHY: Just one second, Your Honor.
25 ALJ EIGENHEER: Okay.

1 DIRECT EXAMINATION
2 BY MR. MURPHY:
3 Q. Thanks for waiting through that --
4 A. Sure.
5 Q. -- Delores.
6 Can you please state your name for the
7 record.
8 A. Delores Kells.
9 Q. And who is your current employer, and what is
10 your current position?
11 A. I work for Dignity Health. I am the director for
12 the urgent cares of the East Valley service area.
13 Q. And can you tell me what the east -- I'm sorry --
14 East Valley service area is?
15 A. The East Valley service area includes Chandler
16 Regional Medical Center, Mercy Gilbert Medical Center, the
17 cities of Gilbert; Queen Creek; San Tan; Mesa; Ahwatukee,
18 which is in Phoenix. I think that's all the cities.
19 Q. And those are all in Maricopa County?
20 A. Those are all in Maricopa County, yes.
21 MR. MURPHY: Your Honor, if we could pull up
22 CA-136, please.
23 BY MR. MURPHY:
24 Q. Ms. Kells, do you recognize this document?
25

1 A. Yes.
2 Q. What -- Can you tell us what it is, please?
3 A. This is my CV.
4 MR. MURPHY: Move to admit Delores Kells'
5 CV, CA-136.
6 ALJ EIGENHEER: Any objections?
7 MS. FICKBOHM: No objections.
8 MR. RAY: No, Your Honor.
9 ALJ EIGENHEER: CA-136 is admitted.
10 BY MR. MURPHY:
11 Q. Ms. Kells, can you tell us your educational
12 background and your certifications that you have, please?
13 A. Yeah. I have a master's of science of nursing
14 from ASU. I have a master's of business administration
15 and a master's of health administration from the
16 University of Phoenix. I have a registered nurse license.
17 I am certified in advanced cardiac life support, pediatric
18 advanced life support, and basic life support.
19 Q. And your work experience, work history?
20 A. It's a long one.
21 Q. That's okay.
22 A. I started my career in the Air Force. I was a
23 labor and delivery nurse for three years.
24 Q. When was that? Sorry. I know it's
25 inappropriate.

1 A. 1982.
2 Q. Okay.
3 A. I was in the Air Force for three years. When I
4 left the Air Force after three years, then I went to work
5 in a small Phoenix hospital as a labor and delivery nurse
6 for just a few months. I left there and went to work for
7 Maricopa County as a public health nurse or community
8 health nurse for six years. When I left there, I went to
9 a home health care agency, and I was a home health care
10 nurse and then I was a home health care supervisor. I was
11 there for several years, five or six maybe.
12 And then when I left there, I went to a
13 large insurance company. It was FHP at the time and then
14 had become PacifiCare. I was in their home health care
15 department as their home health care supervisor, manager,
16 hospice manager. That department then was closed within
17 that company. I went into a divisional director position.
18 I was the director for the division of social services,
19 case management, utilization review for PacifiCare. I was
20 there for several years, five or six years.
21 I left there and went back into the hospital
22 as an ICU nurse at Phoenix Memorial Hospital. I was there
23 for approximately a year, and then went to Chandler
24 Regional hospital as an ICU nurse. I was there for six
25 months. I transferred from there into the Gilbert urgent

1 care center as a nurse. And then subsequently, I was a
2 clinical -- the urgent care supervisor, the urgent care
3 manager of two centers, and then I became the director for
4 all four centers.
5 Q. And when did you start at the Gilbert -- the
6 Dignity Health Urgent Care in Gilbert?
7 A. In 2000.
8 Q. So you've been with Dignity since 2000?
9 A. Yes.
10 Q. So you've testified you're a regional director
11 for Dignity Health's urgent cares?
12 A. Yes.
13 Q. And the locations you identified -- Gilbert;
14 Queen Creek; Ahwatukee; and Maricopa, Pinal County --
15 A. Yes.
16 Q. -- that you're employed --
17 A. Yes.
18 Q. -- or --
19 A. Yes.
20 Q. And what are your job responsibilities as this --
21 in this regional director role?
22 A. I am responsible for the overall operations and
23 performance of all four centers. I oversee all clinic
24 operations, staffing operations, financial performance,
25 budgetary development, budgetary -- or, development and

1 adherence to any kind of compliance requirements, both
2 federal and state, and regulatory. I am responsible for
3 all staffing and collaboration with our medical directors
4 on all issues related to our urgent care centers.
5 Q. As part of that role, do you oversee ambulance
6 transports?
7 A. Yes, that's part of my role.
8 Q. Where is your office located?
9 A. I have an office at each of my centers, so I have
10 four offices.
11 Q. And let's focus just on Maricopa County.
12 A. Okay.
13 Q. What are the monthly patient volumes at various
14 urgent care centers under your direction?
15 A. Our volumes will fluctuate throughout the year,
16 so our busiest times are going to be approximately
17 November/December through March. At our Queen Creek
18 facility, we'll see approximately 1,400 patients a month.
19 At our Gilbert and our Ahwatukee facility, we'll see
20 approximately 2,400 patients per month.
21 Q. That's -- that's during your busy season?
22 A. That's during our busy season.
23 Q. When is the busy season for you?
24 A. November through March.
25 Q. And why is that?

1 A. You have an influx of snowbirds. We also have
2 flu season and people are more sick in the wintertime than
3 they are in the summertime.
4 Q. And so what are your numbers -- your census
5 numbers in those same three facilities during the summer
6 months?
7 A. They're about two-thirds less.
8 Q. Okay. If you know, how are the urgent cares
9 under your -- under your direction licensed? And again,
10 Maricopa County.
11 A. All three of the ones that are in Maricopa County
12 are licensed as what we call a Type B emergency room.
13 They -- Our Queen Creek facility is licensed under Mercy
14 Gilbert Medical Center. Our Gilbert and Ahwatukee
15 facility is licensed under our Chandler Regional Medical
16 Center, but they are all licensed as a Level B emergency
17 room, which means we're held to the EMTALA guidelines, the
18 same as an emergency room in the hospital. So we -- we
19 are required by law to see and treat every person that
20 walks into our centers.
21 Q. And where is the Pinal -- Is the Pinal County
22 urgent care similarly licensed?
23 A. Yes. Our facility in Maricopa is licensed under
24 Chandler Regional Medical Center. It's also a Level B
25 emergency room.

1 ALJ EIGENHEER: I'm sorry. Did you say
2 Level B, as in boy?
3 THE WITNESS: B, as in boy. Yes.
4 ALJ EIGENHEER: Thank you.
5 BY MR. MURPHY:
6 Q. What type of patient conditions do you see at the
7 Maricopa County urgent cares?
8 A. We see all levels of patients. We see patients
9 for very low acuity from cough, cold, in need of
10 medication refill to patients who are very high acuity.
11 We have heart attack, strokes, drug overdoses, very high
12 acuity. So we see every- -- everybody in between those.
13 Q. Given that range of patients, do you ever have a
14 need to transfer patients out of your urgent care facility
15 to a higher level of care?
16 A. Yes.
17 Q. And how are those -- how do those patients
18 typically transfer out of your facility to a higher level
19 of care?
20 A. Depending on the patient's condition, which is
21 assessed by a physician -- we have physicians that work at
22 the urgent care centers -- patients who are deemed very
23 critical, we'll -- we will activate 911. If the physician
24 determines that our patients are urgent, needing a higher
25 level of care, those that pose a risk of deterioration if

1 they remain in our center longer than 30 minutes, we will
2 then call an ambulance for ambulance transport. We also
3 have patients who if the physician has determined is
4 stable, they can transport themselves through their own
5 private vehicle to the hospital. We do have patients that
6 will leave what we call AMA, or against medical advice.
7 If it has been deemed that they need to go by ambulance
8 and the ambulance arrival time is lengthy, they may choose
9 to sign themselves out AMA and take themselves to the
10 hospital because they don't want to wait, or whatever
11 their condition is, they won't wait.
12 Q. Do you see patients where -- in the urgent cares
13 in all three Maricopa County urgent cares where a
14 physician may determine that 911 is appropriate?
15 A. Yes.
16 Q. So you have 911 response to the urgent care?
17 A. Yes.
18 Q. Okay. And what conditions would necessitate
19 calls to 911 or trigger the 911 system to your urgent
20 cares?
21 A. We would call 911 for any patient that presents
22 to our center in cardiac arrest, perhaps respiratory
23 arrest, code situation; present to our center unconscious,
24 drug overdose; present to our center with an MI, heart
25 attack, or stroke, or imminent childbirth or uncontrolled

1 bleeding would be ones that we would call 911.
2 Q. Okay. When you say "imminent childbirth," it's
3 not -- it's just a regular childbirth; it's just about to
4 happen?
5 A. Yes, it's just about to happen. Imminent.
6 Q. Correct.
7 How often do you call -- Let's talk about
8 the busy season at your -- at your urgent cares. This may
9 vary by center, but how often do you call 911 -- call for
10 a 911 response to any one of those facilities in Maricopa
11 County?
12 A. At our busy season, probably we average about
13 once per day of a 911 call at each center. In our slower
14 summer months, maybe two to three per month per center.
15 Q. Per month?
16 A. Oh, I'm sorry, per week.
17 Q. So you have -- Busy season is one per day, you
18 said?
19 A. At each center.
20 Q. Slow season is how many?
21 A. Two to three per day -- I'm sorry. Two or three
22 per week.
23 Q. And then -- Okay. If you set aside those
24 patients you just described as 91- -- as necessitating
25 911, how would you classify most of the patients that

1 require transport to a higher level of care?
2 A. By ambulance. Our patients are going to be in an
3 urgent situation. If our patients are not in an urgent
4 situation, they can go by private vehicle. So if we are
5 calling an ambulance, it's because our patients are in an
6 urgent situation, as determined by our physicians. So our
7 physicians will assess our patients, make that
8 determination based on that condition that that patient
9 poses a risk if they remain in our center longer than
10 30 minutes, that they are going to deteriorate.
11 MR. McGOLDRICK: 3 or 30?
12 THE WITNESS: 30.
13 They have a high risk of deterioration of
14 either loss of life or loss of quality of life if they
15 remain in our center. So if they are transported by
16 ambulance, they are urgent. If they are transported by
17 private vehicle, they are non-urgent and stable.
18 BY MR. MURPHY:
19 Q. Who -- who is the ambulance company that provides
20 most of the transports in your Maricopa County urgent care
21 facilities?
22 A. AMR.
23 Q. And the same question for the Pinal County
24 facility.
25 A. AMR.

1 Q. Can you -- We're going to talk a little bit
2 about how the transport's arranged from the urgent care to
3 the higher level of care. And this maybe seems obvious,
4 but -- but can you talk about if there's a process for
5 triggering 911, a patient that you've described as
6 requiring -- necessitating a 911 call, how is that -- how
7 is that put into action?
8 A. When a patient presents to our center and is
9 determined by our physician that a 911 call needs to be
10 placed or is obvious that a 911 call needs to be placed,
11 then one of our staff members will place that 911 call.
12 After we obviously stabilize the patient, then we will
13 place that 911 call. The physician may also make a
14 determination that a 911 call needs to be placed for the
15 patient because of the condition of the patient. We will
16 then have a staff member place that 911 call and then
17 stabilize the patient.
18 Q. Okay. And again, another probably obvious
19 question, but who responds to that 911 call to your
20 Maricopa County facilities?
21 A. When we call 911, we have the local fire
22 department respond to those, so that would mean that we
23 have a fire truck and we have at least four to five
24 personnel and their equipment respond to our center.
25 Along with that will be -- an ambulance and their crew

1 respond also.
2 Q. Okay. How does that crew of fire- --
3 firefighters/paramedics arrive? There's an ambulance. Is
4 it a truck?
5 A. The truck. The firefighters arrive in a fire
6 truck. Sometimes the fire chief will come. And then the
7 ambulance follows behind.
8 Q. Okay. And can you describe the impact, if any,
9 that having a 911 response to -- to -- has on your urgent
10 care?
11 A. It's extremely disruptive to our operations when
12 we call 911 and have the fire crew in our centers. In
13 addition to being disruptive to our operations -- because
14 that's a lot of people, a lot of equipment in our
15 centers -- it creates a lot of anxiety and fear for our
16 patients that are in the center already and the patient
17 that's actually being transported.
18 In addition to that, and probably the
19 biggest concern of ours, is that when we call 911
20 unnecessarily, we know that we are removing that service
21 from our community. And we are good stewards of our
22 resources, and that is not in alignment with that goal of
23 being good stewards of our resources when we know that we
24 are removing service from our community unnecessarily.
25 And that's what -- that's what we're doing when we call

1 911 when we don't really need a 911 call for our patients.
2 Q. So -- but we were just talking about calls that
3 are 911 calls -- that require 911 service.
4 A. Uh-huh.
5 Q. Okay. So can you describe the process at your
6 Maricopa County urgent cares for arranging a non-911 but
7 emergent ambulance transport?
8 A. Yes. The patient will present. The physician
9 will examine the patient, determine that an urgent
10 transport needs to occur based upon the patient's
11 condition. He will then order that call to be placed.
12 The staff member will place the call to usually AMR. We
13 then go through a series of questions -- it's an algorithm
14 by their dispatch team. We go through a series of
15 questions, and we answer that to get an estimated time of
16 arrival for the crew. Once that estimated time of arrival
17 is obtained, we then speak back to our physician about
18 that estimated time of arrival to make sure that that is
19 within an appropriate time frame for that patient and
20 patient's condition. If that is an appropriate time
21 frame, then we will accept that transfer. We then
22 continue to provide care and treatment for the patient and
23 wait for the crew to arrive.
24 If the estimated time of arrival is beyond
25 what we feel is appropriate for our patient, then we will

1 talk to our physician. We will then call 911 -- activate
2 911 to have a response time that's within our appropriate
3 time frame.
4 MR. MURPHY: Your Honor, could we have
5 CA-230T, please?
6 ALJ EIGENHEER: I'm sorry?
7 MR. MURPHY: CA-230T, as in Tom.
8 MS. FICKBOHM: I'm sorry. What's the
9 exhibit number?
10 MR. MURPHY: 230T, as in Tom.
11 BY MR. MURPHY:
12 Q. Can you tell me -- This is an August 24, 2017,
13 email. Can you tell me if you received this? This email
14 is addressed to you?
15 A. Yes.
16 Q. And you received this email?
17 A. Yes.
18 Q. Do you recall receiving this email?
19 A. Yes.
20 MR. MURPHY: Move for the admission of
21 CA-230T.
22 ALJ EIGENHEER: Any objection?
23 MS. FICKBOHM: Can you scroll down, Judge?
24 I'm sorry.
25 Okay. No objection.

1 ALJ EIGENHEER: CA-230T is admitted.
2 BY MR. MURPHY:
3 Q. Ms. Kells, can you read the subject line of this
4 email for me?
5 A. Yes. "Urgent versus non-urgent."
6 Q. And just under that, you'll see there's an
7 attachments line. Can you read what the attachments to
8 this are?
9 A. "Urgent versus non-urgent doc, non-Urgent Call
10 question doc, and an Urgent Call question doc."
11 MR. MURPHY: Your Honor, can we advance to
12 the next page? Thank you.
13 BY MR. MURPHY:
14 Q. Can you tell me why you received this email, if
15 you know?
16 A. Yes. There was a discrepancy between what we
17 felt were urgent versus non-urgent and what AMR determined
18 to be urgent versus non-urgent patients. So I had asked
19 for some clarification and explanation.
20 Q. And you received this email in response to that
21 request for clarification?
22 A. Yes.
23 Q. Okay. Can you read the definition of non-urgent
24 for us into the record, please?
25 A. "Non-urgent transfer - is scheduled at least one

1 hour in advance and shall mean a stable patient that has a
2 low risk or medium risk of his or her condition
3 deteriorating as determined by the patient's transferring
4 clinician."
5 Q. Is that your -- Given your experience, is that
6 consistent with your understanding of what a non-urgent
7 transfer is?
8 A. Yes. Uh-huh.
9 Q. And then the next line, Subheading b, Urgent
10 transfers, can you read that definition into the record,
11 please?
12 A. "Urgent transfers - is immediate and shall mean a
13 patient that has a high risk of his or her condition
14 deteriorating as determined by the patient's transferring
15 clinician."
16 Q. Is that consistent with your understanding of
17 what an urgent patient is?
18 A. Yes.
19 Q. Based on your experience in the urgent care
20 centers, is that -- is this how AMR classified patients
21 leaving your -- your urgent cares and going to higher
22 levels of care?
23 MS. FICKBOHM: I'm going to object on the
24 grounds of foundation.
25 MR. MURPHY: I -- I can establish.

1 ALJ EIGENHEER: Please do.
2 BY MR. MURPHY:
3 Q. Ms. Kells, during your time at the urgent cares
4 in Gilbert and at the various urgent cares under your
5 purview, have you had occasion to treat patients?
6 A. Yes.
7 Q. Treat urgent patients?
8 A. Yes.
9 Q. Treat non-urgent patients as defined on this?
10 A. Yes.
11 Q. In the past three years?
12 A. Past 18 years, yes.
13 Q. Have you ordered a non-urgent transport from a
14 Dignity Health Urgent Care in Maricopa County from AMR in
15 the past three years?
16 A. No. Like I said before, our transports by
17 ambulance will be urgent.
18 Q. Okay. So have you -- have you personally ordered
19 an urgent transport from AMR at any one of the urgent care
20 centers in Maricopa County in the past three years?
21 A. Many.
22 Q. Do you know how many?
23 A. 25.
24 Q. Based on that experience, was this how AMR
25 classified patients to be transferred by your urgent care

1 center?
2 A. No. AMR classifies their transports based upon a
3 diagnosis, and it's a dispatch that makes that
4 determination. We classify our patients by -- our
5 physicians make that classification by assessing the
6 patient and taking into consideration those patients'
7 presenting conditions, so no.
8 Q. You said the ultimate -- The person responsible
9 for making a determination about whether or not a patient
10 is urgent or non-urgent is who?
11 A. A dispatcher, a dispatch person.
12 Q. No. From your -- from the Dignity Health
13 facility.
14 A. From our facilities, it is our physicians.
15 Q. Okay.
16 A. Our treating physicians.
17 MR. MURPHY: Your Honor, can we see CA-224,
18 please?
19 Oh, excuse me. Move to admit -- Did we
20 admit it?
21 ALJ EIGENHEER: Already did.
22 MR. MURPHY: Did we --
23 MS. FICKBOHM: You already admitted 232.
24 MR. MURPHY: I did "T" but not the resume.
25 I admitted it. Yeah. Sorry, Your Honor.

1 ALJ EIGENHEER: Yeah.
2 MR. MURPHY: Yeah, 224. Okay.
3 BY MR. MURPHY:
4 Q. Can you -- Do you recognize this document?
5 A. Yes.
6 Q. Can you tell me what this document is?
7 A. This is an algorithm that AMR uses when we call
8 for ambulance transport.
9 Q. Do -- do you -- Have you seen a copy of this
10 document before?
11 A. Yes.
12 Q. Where have you seen this document?
13 A. It was sent to me at my request. I believe I was
14 informed that it was developed at our request due to some
15 concerns we had.
16 Q. When you say "our," who do you mean "our"?
17 A. Dignity Health request.
18 Q. Certain people within Dignity Health --
19 A. Myself.
20 Q. Can you identify who?
21 A. Myself.
22 ALJ EIGENHEER: You need to wait until he
23 finishes before you answer or it makes her very angry.
24 You don't want to see her angry.
25

1 BY MR. MURPHY:
2 Q. Are there certain people within Dignity Health
3 that were involved in the development of this document?
4 A. Myself.
5 Q. You're the -- you're the only one?
6 A. Yes.
7 Q. And who did you talk to at AMR about issues
8 related -- issues that led to the development of this
9 document?
10 A. We had ongoing discussions with a liaison by the
11 name of Alison Skinner. And then we have ongoing
12 discussions with AMR leadership. The only name I'm going
13 to be able to recall is Paul Cloward.
14 Q. Can you walk the judge through what these two
15 processes are and what this -- what this document
16 instructs someone in the urgent care to do?
17 A. Sure. The Routine Response Needed under the
18 blue, that is the normal algorithm for a non-urgent
19 transfer. So when the dispatch is called, they will run
20 through these set of questions before they will provide an
21 estimated time of arrival for the crew.
22 The algorithm under red is an urgent
23 response, so they're going to start with those first three
24 questions, and the expectation was that the ETA would then
25 be provided to us. That ETA -- we use that ETA to

1 determine whether or not we're going to continue down this
2 algorithm or whether or not the time is given to us would
3 be appropriate.
4 Q. Why is it -- why was it important to have a
5 shortened list of questions for the urgent patients on
6 this -- in this red box?
7 A. It was a time -- time requirement or a time
8 sensitivity. Under the blue box, that process may take
9 anywhere from 5 to 10 minutes. When we have a patient who
10 is in an urgent situation, 5 to 10 minutes is critical.
11 We can't wait 5 to 10 minutes to receive an estimated time
12 of arrival. We've lost 10 minutes to call 911. That's
13 why we have requested an abbreviated call algorithm so
14 that we could obtain that estimated time of arrival before
15 we answered all of those other questions. We can get
16 through the first three questions in a minute or two
17 minutes. At that time an ETA can be given to us. We can
18 then make a determination do we need to hang up and call
19 911? Or is the estimated time of arrival appropriate and
20 acceptable to us?
21 Q. When was this -- this sheet or card just given to
22 you? Do you recall?
23 A. I don't know.
24 Q. Was it a year ago?
25 MS. FICKBOHM: I'm going to object. She

1 said she doesn't know.
2 MR. MURPHY: I'm trying to help her to
3 remember, Your Honor.
4 THE WITNESS: It's been more than a year
5 because it was when Alison was still with AMR. So it's
6 probably been two to three years.
7 BY MR. MURPHY:
8 Q. So if you have an urgent patient, can you -- As
9 someone who's made a call to AMR for an urgent transport,
10 can you walk me through the process using this red box of
11 an urgent -- a physician tells you it's an urgent patient?
12 What happens next?
13 A. The expectation is we call, we provide where we
14 are, who we are, and the condition of our patient. We are
15 at that time given an ETA. The reality is that we call,
16 we give them information, and the dispatch continues to
17 ask us questions. And the clock is ticking. So they'll
18 ask -- they'll continue down that algorithm.
19 THE WITNESS: If you can scroll up a little
20 bit.
21 They'll continue down that algorithm, asking
22 questions that are irrelevant to us when all that we need
23 is really an estimated time of arrival. So we're spending
24 5 to -- 3 to 8, 10 minutes trying to get an estimated time
25 of arrival for an urgent patient when we should have

1 gotten it at Number 3.
2 BY MR. MURPHY:
3 Q. All right. And once you have an ETA, what
4 happens next?
5 A. Once we receive an ETA, then we will let our
6 physicians know what that ETA is. That physician then
7 makes a determination on whether or not that is
8 appropriate. And if we accept that transfer, then we will
9 continue to care for the patient and wait for that crew to
10 arrive. If we don't accept that transfer, then we will
11 hang up and we will call 911, and then we continue to care
12 for our patient until the fire -- fire crew arrives.
13 Q. Under -- And will a physician order calling 911
14 for an urgent patient if there's an extended ETA?
15 A. Yes.
16 Q. Okay.
17 A. Once we receive the ETA, then that is relayed to
18 our physician who then makes a determination on what we do
19 next.
20 Q. Can you, in your role as regional director of
21 those four urgent cares -- but let's focus on issues with
22 the Maricopa County urgent care centers -- can you give an
23 overview of some of the issues that those urgent cares
24 have had with arranging and getting timely transports from
25 AMR?

1 MS. FICKBOHM: And I'm just going to object
2 in advance on relevancy and foundation unless we have
3 some, like, date, time, place so we know what we're
4 talking about. I mean, if it's something that happened
5 before AMR even had a license, why would we bother talking
6 about it? And I just want to know. And so we can address
7 it, I'm looking for date, time, place.
8 MR. MURPHY: And we can -- we can certainly
9 go directly into some emails about that. I was going to
10 have her testify about issues directly with AMR, not
11 prelicensed AMR.
12 ALJ EIGENHEER: I'll allow it.
13 BY MR. MURPHY:
14 Q. So AMR only.
15 A. Okay.
16 Q. Can you give some -- a list of some of -- an
17 overview list of some of the issues that you've had in the
18 last three years with AMR with arranging and getting
19 timely transports for urgent patients?
20 A. Yes. We have had concerns with this process:
21 the calling in to arrange for an ambulance transport; the
22 process of obtaining a timely estimated time of arrival
23 within the process of calling; lengthy ETAs, meaning that
24 they extend beyond the 30 minutes. And we've had some
25 sporadic problems with the crews when they arrived

1 on-site. And we've had some concerns with AMR
2 recommending -- or, advising us to call 911 when it's
3 really not necessary to call 911 due to the estimated time
4 of arrival.
5 Q. In your role as regional director, is it your
6 responsibility to address these issues with AMR or someone
7 else's responsibility?
8 A. They are mine.
9 Q. And how -- how would you address these issues
10 generally with AMR?
11 A. We work closely with the liaison Alison Skinner,
12 and we, for the past approximately two years, have had
13 monthly calls with AMR to discuss our concerns, cases, and
14 anything that had come up that needed to be researched and
15 discussed.
16 Q. Do you know when those monthly meetings started?
17 A. I do not recall the exact date, no.
18 Q. But it was two years ago?
19 A. Approximately.
20 Q. And who would attend those monthly meetings?
21 A. Schedule permit, I would attend, and the
22 supervisors of the four centers would attend. AMR
23 leadership would attend, including Alison Skinner, Paul
24 Cloward, and I'm not sure of any other names from AMR.
25 Q. And when you say "four centers," what do --

1 what -- do you mean the urgent care centers --
2 A. Yes.
3 Q. -- under your purview?
4 A. Yes.
5 Q. And would these issues be addressed at these
6 monthly meetings or issues like this that you raised?
7 A. These issues would be raised, and then AMR's
8 response would be that they would research it and get back
9 to us on the following month meeting. They would get back
10 to us. Our experience has become where there's a lot of
11 excuses, there's a lot of rationalization behind what has
12 happened with the calls we had concerns with. There
13 wasn't a whole lot of accountability on AMR's part, and
14 really nothing had ever been resolved. We just continued
15 to have the same issues over and over and discussed the
16 same things numerous times.
17 MR. MURPHY: Your Honor, can we have email
18 232C, as in cat, please?
19 ALJ EIGENHEER: Did you wish to offer 224?
20 MR. MURPHY: Yes, I did. Thank you. I'm
21 sorry.
22 ALJ EIGENHEER: Any objections?
23 MS. FICKBOHM: No.
24 ALJ EIGENHEER: Okay. CA-224 is admitted.
25 And you said 223?

1 MR. MURPHY: 232C.
2 BY MR. MURPHY:
3 Q. This is a May 11, 2018, email from Alejandro
4 Lopez. And you are in the To line with several other
5 people. Is that correct?
6 A. Yes.
7 Q. Do you recognize this email?
8 A. Yes.
9 Q. Do you recall receiving this email on May 11,
10 2018?
11 A. Yes.
12 MR. MURPHY: Move to admit 232C, please.
13 MS. FICKBOHM: Can you scroll down, Judge?
14 I'm sorry.
15 ALJ EIGENHEER: Sorry.
16 MS. FICKBOHM: Can you scroll down a little
17 bit more?
18 ALJ EIGENHEER: That's it.
19 MS. FICKBOHM: Where does this relate to?
20 MR. MURPHY: Can you -- I'll -- I'll ask
21 her and establish foundation, if she knows.
22 MS. FICKBOHM: Yeah.
23 BY MR. MURPHY:
24 Q. Can you review this email, please, Ms. Kells, and
25 let me know if you know which facility this call relates

1 to, if you recall.
2 A. I cannot tell you which center this came from.
3 Q. Can you tell me what the incident involved was?
4 A. Yes. It was a lengthy estimated time of arrival.
5 Q. How lengthy?
6 A. Well, we placed the call at 1354. They placed us
7 on hold at 2 o'clock. At 1406, we were advised to call
8 back with an ETA. 1407, they called the facility, no
9 answer. They called back again and hung up. 1408, the
10 call was taken; they were able to reach us, gave a
11 20-minute ETA. They arrived on-site on the scene at 1434.
12 So initial call was at 1354. They arrived on the scene at
13 1434.
14 Q. Was this one of the issues that was discussed at
15 a monthly meeting?
16 A. Yes.
17 Q. And this email is a follow-up email, like you
18 discussed?
19 A. Yes.
20 Q. And so this email from Mr. Lopez -- Mr. Lopez
21 works for AMR. It doesn't indicate there.
22 A. Yes, he is the liaison.
23 Q. Okay. And can -- can you read for me the
24 response from Mr. Lopez about --
25 A. It says, "Please rest assured" --

1 THE COURT REPORTER: I'm sorry.
2 BY MR. MURPHY:
3 Q. -- this incident?
4 MS. FICKBOHM: And -- and just let me lodge
5 an objection. He moved to admit it. I objected because
6 we can't tell where it is. We don't know if this is
7 UC-Maricopa or what. And so rather than admitting it now,
8 having her read it into the record --
9 MR. MURPHY: I'll -- I'll move to admit it
10 because it doesn't necessarily relate to where the
11 location is. It relates to the response from AMR.
12 MS. FICKBOHM: But again --
13 MR. MURPHY: It relates to how AMR is
14 responding to complaints from Dignity Health but not
15 necessarily about the incident at the center.
16 MS. FICKBOHM: My objection is purely how
17 much time are we going to spend on Urgent Care-Maricopa,
18 Your Honor? And I don't know if this is Urgent
19 Care-Maricopa or where.
20 MR. RAY: I join in that as well.
21 ALJ EIGENHEER: So we have no idea if this
22 is Urgent Care-Maricopa or one of the Maricopa County
23 urgent cares?
24 MS. FICKBOHM: That's a question for the
25 witness.

1 MR. MURPHY: Can we go off of the list in
2 the To line, please?
3 And it's not a waste of time because these
4 are serious issues and these are patients that we're
5 talking about. Well, Mr. Cloward may know. Mr. Lopez
6 would know. Mr. Jaramillo would know.
7 MS. FICKBOHM: We've got the Pinal County OM
8 from AMR listed on that, so this is probably Pinal County.
9 MR. MURPHY: Who is that? I'm sorry.
10 MS. FICKBOHM: The first cc, he's in Pinal
11 County.
12 MR. MURPHY: And there are non-Pinal County
13 names on there as well.
14 So we can move to the next exhibit since
15 Ms. Kells doesn't know where this incident occurred, if
16 it's in Maricopa -- the city of Maricopa.
17 ALJ EIGENHEER: Okay. So 232C is not
18 admitted.
19 What's next?
20 MR. MURPHY: 232F, Your Honor.
21 MS. FICKBOHM: I'm going to object again.
22 This is an email from Rebecca Haas about Urgent
23 Care-Maricopa.
24 MR. MURPHY: I'm sorry. What?
25 MS. FICKBOHM: This is 232F.

1 ALJ EIGENHEER: From Alison Skinner.
2 MS. FICKBOHM: Are we looking at 232F?
3 MR. MURPHY: 232F.
4 MS. FICKBOHM: Okay. Scroll down.
5 Go back up. I'm sorry. Can you go back up,
6 Judge? I thought I saw this was Maricopa. So we've got
7 Ahwatukee. Is this the one that was combined Ahwatukee
8 and --
9 MR. MURPHY: It may be -- that may be true.
10 MS. FICKBOHM: I think this is -- You're
11 right; this is both a Maricopa and Ahwatukee combined one.
12 MR. MURPHY: So let's --
13 MS. FICKBOHM: You've got UCM there on the
14 bottom part of it. I object to the extent that it was
15 Maricopa urgent care.
16 MR. RAY: Join.
17 ALJ EIGENHEER: I don't think it's
18 officially been offered yet.
19 MR. MURPHY: We're going to move on, Your
20 Honor, from this email.
21 Let's do this, because we know that these
22 are in Maricopa County, so I won't waste any more time on
23 non-Maricopa County issues.
24 BY MR. MURPHY:
25 Q. At some point did you initiate any protocol for

1 tracking 911 calls -- non-911 calls in your urgent care
2 facilities, again focused on Maricopa County?
3 A. Yes. We initiated an EMS call log at our
4 centers.
5 Q. And was this a computerized log or handwritten
6 log?
7 A. No, it was a manual handwritten log.
8 Q. Who designed the log?
9 A. Myself along with clinical supervisors.
10 Q. Who are those clinical supervisors?
11 A. Sherri Maez; Angela Roumain, who has been
12 replaced by April Nelson; Luanne Blair; and Becky Haas.
13 MR. MURPHY: Your Honor, 232B, please.
14 BY MR. MURPHY:
15 Q. This document has been marked 232B, Ms. Kells.
16 It has handwritten on the top "Ahwatukee." Is this an
17 example of an EMS call log you just described?
18 A. Yes.
19 Q. Would you review these call logs in your capacity
20 as regional director of the four Maricopa -- excuse me --
21 Dignity Health Urgent Cares?
22 A. Yes.
23 Q. Do you recall reviewing this log -- or, these
24 logs?
25 MR. MURPHY: You can scroll through it.

1 THE WITNESS: I reviewed all the logs.
2 MR. MURPHY: Move to admit CA-232B, please.
3 MS. FICKBOHM: Without more foundation, Your
4 Honor, I'm going to object, because as far as I can
5 tell -- and just do a quick read-through -- based upon
6 what she has said about number of calls, et cetera, this
7 is not a complete recitation of all EMS transfers that
8 were done out of Ahwatukee. I don't think she's the one
9 who completed it. I don't know how she would be able to
10 confirm accuracy. They don't tell us anything about the
11 patient's condition.
12 MR. MURPHY: Well, the patient condition,
13 Your Honor, is redacted for personal health information.
14 This is the issue I was talking about earlier, that we had
15 no control over what we can and cannot see, and obviously,
16 we don't have a protective order in this case because one
17 was never reached amongst all the parties that would share
18 this information.
19 MS. FICKBOHM: Well, look at all the blanks.
20 MR. MURPHY: And -- and the blanks are not
21 blanks. Those are redactions. Those are -- That's how
22 the document came to us from Dignity Health. Those are
23 redactions from Dignity Health.
24 MS. FICKBOHM: Well --
25 MR. MURPHY: And if you see --

1 THE COURT REPORTER: I'm sorry.
2 ALJ EIGENHEER: One at a time.
3 MS. FICKBOHM: The page we're on right now,
4 actual arrival time is missing.
5 MR. MURPHY: Well, if you scroll to the
6 bottom, Your Honor, you'll see that it's been marked by
7 Dignity Health -- well, yeah. "Confidential - Contains
8 Protected Health Information." And so in addition to
9 information that's been redacted, which is the white, you
10 have other information that may be considered protected
11 health information in these documents, which is why they
12 were withheld, not disclosed timely by Dignity Health in
13 response to a subpoena and why we're dealing with these
14 issues.
15 But Ms. Kells has testified she's -- she
16 initiated the development of these logs. She's testified
17 that she's reviewed -- she reviews all of the logs.
18 Ms. Kells -- and I can ask Ms. Kells if she had
19 conversations about outlying incidents with the
20 practitioners and the clinicians in her various urgent
21 cares and discusses issues in these logs with anybody.
22 MS. FICKBOHM: Can I voir dire the witness
23 on foundation, Your Honor?
24 ALJ EIGENHEER: You may.
25

1 VOIR DIRE EXAMINATION
2 BY MS. FICKBOHM:
3 Q. Ms. Kells, did -- how many of these entries on
4 these logs did you personally make?
5 A. I probably have not done any of them.
6 Q. And how many of the entries on this log did you
7 personally go and compare to your patient records to
8 ensure accuracy?
9 A. There isn't a way that you can do that.
10 Q. And did you have a written policy that required
11 your staff to complete this for each and every patient
12 that was transferred?
13 A. No.
14 Q. And so you would agree with me -- For example,
15 your 2017 dates, I added them up, and you only have seven
16 transfers in -- in 2017, two of which went to 911. That
17 can't be accurate, can it?
18 A. No.
19 Q. And the 2018 one, you've got -- through July of
20 2018, you've got 23. That can't be accurate, can it?
21 A. What's your number for March?
22 Q. So between January and July of 2018, your
23 Ahwatukee log -- That's the one we're talking about,
24 right?
25 A. Uh-huh.

1 Q. -- shows 23 calls, including 3 that were
2 submitted to 911, so that's only 20 IFT in a six -- in a
3 seven -- roughly seven-month period. That can't be
4 accurate, can it?
5 A. No.
6 Q. And -- and some of these, as we scroll down, the
7 arrival time is missing. The person who wrote the
8 information in is missing; we don't even know who did it.
9 We have blanks. You're not telling us, like, actual
10 arrival time --
11 MS. FICKBOHM: If you could stop, Judge.
12 Could you tell me what page we're on? I'm -- I'm sorry.
13 BY MS. FICKBOHM:
14 Q. We're on page 3, I think it is, a couple lines
15 down. Actual arrival times, we're not seeing those.
16 A. On the 911 calls, there will not be an arrival
17 time.
18 Q. Well, what about the one from 12-18-17?
19 A. Yeah, there should have been one there.
20 Q. And there should be somebody's initial. There
21 should be an actual arrival time. So, I mean -- But
22 you're not going to tell us that these are complete or
23 you've done anything to ensure accuracy, correct?
24 A. No. There's nothing to check them against.
25 Q. You have patient records?

1 MR. MURPHY: Objection, Your Honor.
2 MS. FICKBOHM: Well, she's telling me
3 there's nothing to check them against.
4 MR. MURPHY: Are ETAs -- are ETAs -- ETAs --
5 are -- the ETAs in the medical record. Time the call was
6 placed in the medical record. Did Ms. Kells confirm or
7 discuss any of the outlying incidents with any of the
8 clinical staff? That's a question that hasn't been
9 answered yet and I would like to ask it.
10 ALJ EIGENHEER: Okay.
11
12 DIRECT EXAMINATION (CONTINUED)
13 BY MR. MURPHY:
14 Q. Ms. Kells, any of these call log entries -- did
15 you speak with any of your staff about any of these call
16 log entries?
17 A. Yes. Any of the ones that were outlying, any of
18 the ones that converted to 911, any of the ones that are
19 extended ETAs, we would then research and discuss them at
20 our weekly meetings with AMR. And that was the reason for
21 the log. The reason for the log is we were having issues.
22 We were --
23 Q. Was the EMS log intended to record every single
24 transport out of the Ahwatukee facility?
25 A. No.

1 Q. What was -- what was the purpose of the log?
2 A. The purpose of the log was to confirm our --
3 confirm our suspicions or perceptions that we were not
4 receiving the services that we thought were needed for our
5 patients. The log was to document and keep track of
6 things that we needed to discuss with AMR and further
7 research.
8 Q. And you would follow up with AMR about these
9 issues?
10 A. Yes. The ones that are outlying or the ones that
11 we had to convert to 911 due to the ETAs.
12 Q. Did you ever provide copies of these EMS logs to
13 AMR?
14 A. I don't believe so. I don't know.
15 Q. Would just -- would just review the various
16 incidents with AMR representatives at the monthly
17 meetings?
18 A. Yes.
19 MR. MURPHY: Your Honor, I -- I move for the
20 admission of these call logs and it goes to the weight
21 rather than admissibility.
22 MS. FICKBOHM: And -- and I'm still going to
23 object. This witness has testified that this did not
24 reflect all transfers. It's not complete. She didn't do
25 anything to check accuracy, and she's doing that on the

1 grounds of she can't because of her records, but she's the
2 one that put the protocol into place and designed this.
3 And so what's missing from the records is only missing
4 because they decided not to include it, not because of any
5 fault of any party in this room.
6 MR. MURPHY: Your Honor, I would add that
7 she testified it wasn't intended to track all calls. In
8 fact, AMR had a contractual obligation to track all calls
9 and provide that data to Dignity Health. So this was
10 outlying issues, problems that clinical staff was having
11 where they're calling for people who have urgent care
12 needs. Someone is sick, someone is being -- AMR is called
13 and they have extended ETAs. They're being told to call
14 911, and they jot the note down so they can keep track of
15 that. Because -- and we can look at -- compare this log
16 with Exhibit 179 where it shows 100 percent response times
17 for urgent and non-urgent calls.
18 ALJ EIGENHEER: Okay. But let me just
19 clarify.
20
21 EXAMINATION
22 BY ALJ EIGENHEER:
23 Q. This is not a log of the calls you had issues
24 with? That wasn't the purpose of it?
25 A. That was, yes. The purpose -- the log was put

1 into place because we were having concerns regarding --
2 and so -- but it's not exclusive -- not inclusive at all.
3 Just calls that we had issues with. There are some calls
4 on here that met the ETA. There were calls on here that
5 they were -- the showed up past the ETA. And there's
6 calls on here where we converted to 911 due to the ETA.
7 Q. And that was my question. So this isn't later in
8 the day you say, "Oh, we had an issue with this. Let me
9 make a note." Was this contemporaneous with the call
10 being made? If you made a call to AMR, someone was
11 supposed to write down in the log "Here's what time I made
12 the call"?
13 A. Yes.
14 Q. "Here was the ETA I was given. Wait, wait, wait,
15 wait, wait. AMR shows up. Here is the time they showed
16 up"?
17 A. Yes.
18 Q. That's how it was supposed to work?
19 A. Yes.
20 Q. So you wouldn't know when you're supposed to
21 write the time called if you were going to have an issue
22 on that call?
23 A. No.
24 Q. So this should include every call you made to
25 AMR?

1 A. If every call was put on the log, yes.
2 Q. And it does not, by your testimony?
3 A. I -- I cannot confirm that, but I would say based
4 upon the numbers, we have more transfers, I believe, than
5 what is shown here.
6 ALJ EIGENHEER: Okay. Then I will admit
7 CA-232B and give it the weight I deem appropriate, which
8 at this point is not much.
9 But please proceed.
10 MR. MURPHY: Thank you, Your Honor.
11
12 DIRECT EXAMINATION (CONTINUED)
13 BY MR. MURPHY:
14 Q. In your supervision of the Ahwatukee urgent care
15 center, can you testify that -- in 2017, were there any
16 urgent responses that were over 30 minutes?
17 A. Yes.
18 Q. And were those urgent responses from calls for
19 urgent transports made to AMR?
20 A. Yes.
21 Q. In 2017, in the Ahwatukee urgent care center,
22 based on your experience as regional director of that
23 facility, can you testify that at any time AMR dispatch in
24 2017 -- I think I said that -- asked -- told someone in
25 your facility to call 911 because an ETA was too long?

1 A. Yes.
2 Q. In that same facility in 2017, was an ETA
3 extended to the point where you had no choice but to call
4 911 --
5 A. Yes.
6 Q. -- for a patient --
7 And that was a patient that would otherwise
8 be urgent?
9 A. Yes.
10 MR. MURPHY: Can we please pull up, Your
11 Honor, CA-179? If we can go to page 2, Your Honor. After
12 all that -- Did you admit that EMS call log?
13 ALJ EIGENHEER: I did.
14 MR. MURPHY: Thank you, Your Honor.
15 BY MR. MURPHY:
16 Q. If you can locate the urgent centers on this list
17 in Maricopa County.
18 A. Yes.
19 Q. Are they -- Can you identify which ones we're
20 looking at, how many lines down? The third line down, is
21 that the Ahwatukee urgent care?
22 A. Yes.
23 Q. And then just below it is Gilbert?
24 A. Yes.
25 Q. And then below that is -- is Maricopa. We're

1 going to skip over that.
2 Then Queen Creek.
3 Those are the three that are in Maricopa
4 County, correct?
5 A. Yes.
6 MR. MURPHY: And if we can scroll over a
7 little bit, Your Honor.
8 BY MR. MURPHY:
9 Q. Okay. And for Ahwatukee, can you read the count
10 for 2017 of urgent transports out of Ahwatukee?
11 A. 5.
12 Q. And the compliance with that -- those 5
13 transports?
14 A. A hundred percent.
15 Q. And, Ms. Kells, have you -- have you reviewed
16 this -- Were you given a copy of this 2017 transport
17 document?
18 A. Yes.
19 Q. When were you given this document?
20 A. Within -- during our meeting with them. So I
21 don't have an exact date.
22 MR. MURPHY: If we can scroll out. I'm
23 sorry, Your Honor. I should have established this.
24 BY MR. MURPHY:
25 Q. You have reviewed this document?

1 A. Yes.
2 Q. And would you agree that there are only five
3 urgent transports, as you've defined them in your
4 testimony, from your Ahwatukee urgent care center in 2017?
5 A. No.
6 Q. If we look at the Gilbert location -- and would
7 you agree --
8 I'm sorry. Before we move on to Gilbert,
9 would you agree that there were a hundred percent
10 compliance with the 30 minutes or less for urgent
11 transports in 2017 to the Ahwatukee facility?
12 A. No.
13 Q. Looking at Gilbert, there is a 34 count. Do you
14 see that there?
15 A. Yes.
16 Q. Does -- do you agree that there were 34 urgent
17 transports in 2017 for the Gilbert urgent care center?
18 A. No.
19 Q. Were there more or less?
20 A. More.
21 Q. How many more, if -- if you know?
22 A. Well, all of our transports by ambulance are
23 urgent, so we don't -- we don't have routine transports.
24 Q. And were all of those urgent transports
25 100 percent compliant with the 30-minute response time

1 requirement?
2 A. No.
3 Q. Skipping over Maricopa to Queen Creek, Queen
4 Creek on this list, how many are identified in the urgent
5 category?
6 A. 19.
7 Q. And what is the compliance on those 19 urgent
8 transports?
9 A. A hundred percent.
10 Q. Do you agree that there were only 19 urgent
11 transports in Queen Creek --
12 A. No.
13 Q. -- at your Queen Creek --
14 A. No.
15 Q. Let me finish. I'm sorry.
16 -- at your Queen Creek urgent care facility?
17 A. No.
18 Q. And do you agree there was a hundred percent
19 compliance even with those 19 that are listed?
20 A. No.
21 Q. Have you started to use any other providers at
22 your urgent care centers?
23 A. We have started to use Maricopa Ambulance, but we
24 haven't used them enough to really evaluate their
25 performance.

1 Q. When did you start using them?
2 A. Just recently. Within the last month possibly.
3 Q. Are you still using AMR?
4 A. Yes.
5 Q. And how would you describe AMR as a partner in
6 ambulance service delivery?
7 A. Our experience with them is it is inconsistent.
8 It's challenging, just due to the inability for them to
9 resolve our issues and their inconsistent quality of their
10 services.
11 Q. What do you find challenging?
12 A. We find it challenging that we continue to have
13 the same issues. And we continue to present those issues
14 to them and we continue to have the same issues month
15 after month.
16 MR. MURPHY: I have no more questions.
17 ALJ EIGENHEER: Cross?
18 MS. FICKBOHM: Thank you.
19
20 CROSS-EXAMINATION
21 BY MS. FICKBOHM:
22 Q. So I just want to make sure that I'm clear on
23 what we're talking about today. We're talking about Queen
24 Creek, Gilbert, Ahwatukee. I'm from Tucson, so some of
25 these regional things aren't making sense to me. And then

1 setting Maricopa urgent care aside, what's the other ones?
2 A. That's the four. That's the fourth one. There
3 are only four.
4 Q. Oh, Gilbert and Ahwatukee aren't one and the
5 same?
6 A. No.
7 Q. Okay. That's why I was confused.
8 Okay. So you said between November and
9 March, Queen Creek's running about 1,300; that was your
10 total volume of people you see in the urgent care?
11 A. Per month -- Our Queen Creek facility per month
12 will see about 1,400 patients per month.
13 Q. 1,400.
14 A. Yes.
15 Q. Okay. And -- and you say Gilbert and Ahwatukee
16 are similar? They're each showing about how many a month?
17 A. About 24 per month.
18 Q. Okay. And then you said that it's about
19 two-thirds of that in the summer for all of these?
20 A. Two-thirds less.
21 Q. Two-thirds less.
22 A. Yes.
23 Q. So two-thirds less, so is it two-thirds of that
24 number that you see in the summer or is it one-third of
25 that in the summer?

1 A. Not sure what.
2 Q. Two-thirds less?
3 A. It would be two-thirds less than what we already
4 see in the summertime -- wintertime.
5 Q. You're seeing about a third of what you see in
6 the winter?
7 A. No. We see about two-thirds of what we normally
8 see.
9 Q. It's a language issue. I wasn't tracking you.
10 Sorry. Okay.
11 So you're telling us that you never ever,
12 ever, ever have your staff in any of those urgent care
13 centers place a call for ambulance transports that isn't
14 defined as urgent?
15 A. Rarely.
16 Q. I'm sorry?
17 A. I said rarely. We don't transfer by ambulance
18 unless it's urgent.
19 MS. FICKBOHM: Judge, could -- could we pull
20 up CA-17?
21 BY MS. FICKBOHM:
22 Q. Do you understand that Dignity did a contract for
23 services with AMR?
24 A. I understand that we have a preferred provider
25 agreement with AMR. That's as far as I know.

1 Q. And so we -- we have CA-17, which is that
2 contract up in front of you. So in the contract --
3 MS. FICKBOHM: Thank you, Judge.
4 BY MS. FICKBOHM:
5 Q. -- AMR and Dignity defined urgent ambulance
6 services and non-urgent ambulances services. Do you see
7 that?
8 MS. FICKBOHM: I'm sorry. I have the wrong
9 one. Ours is -- I'm sorry. CA-24. I think this part of
10 it is the same, but we'll go right to the one anyway.
11 BY MS. FICKBOHM:
12 Q. And so I'd ask you to look at the definition for
13 urgent. Patients who are unstable, require a high level
14 of care and intervention. The response has to be
15 immediate and arrive within 30 minutes of the
16 requested-at-the-bedside pickup time from a licensed
17 facility. You understand that?
18 A. Yes.
19 Q. Okay. And then non-urgent ambulance transport
20 services are patients who are stable but require an
21 immediate transfer. So you never have stable patients
22 that require an immediate ambulance transfer?
23 A. No. Those patients will go via private vehicle.
24 Q. What if they don't have a private vehicle?
25 A. They have family members take them.

1 Q. 100 percent of your patients who come into urgent
2 care have a family member with them?
3 A. They have someone that will take them to the
4 hospital. On rare occasions do we need to call an
5 ambulance for those. Extremely rare.
6 Q. So why would Dignity contract with AMR to provide
7 non-urgent ambulance services if they simply don't exist
8 at urgent care centers?
9 A. I can't answer that question.
10 Q. So you've looked at your medical records and you
11 have determined that never has a patient in stable
12 condition required -- in the last three years required an
13 ambulance transfer from any of the urgent cares you
14 oversee?
15 A. I would never say never, but I cannot recall one
16 patient that we have transferred by ambulance that was not
17 an urgent patient.
18 Q. And would you agree with me that the arrival
19 requirement for non-urgent ambulance services isn't
20 60 minutes from the time the call was placed. A call is
21 placed for -- If it's a non-urgent ambulance transfer, an
22 ETA is given by the ambulance transport dispatch, and then
23 your staff either accepts that ETA or they don't, correct?
24 A. Yes.
25 Q. Okay. And -- and the AMR Ambulance is required

1 to arrive within 60 minutes of that agreed-upon ETA,
2 correct?
3 A. For a non-urgent, yes.
4 Q. And if you don't like the response you're getting
5 from the dispatchers when you call AMR asking for urgent
6 or non-urgent, your people could pick up the phone and
7 call Maricopa Ambulance, right?
8 A. We know that now, yes.
9 Q. So you talked about how if 911 is called, that
10 you get a local fire response, like a first responder.
11 A. Yes.
12 Q. In Queen Creek, the 911 responder is AMR,
13 correct?
14 A. In all three of the Maricopa County facilities,
15 the 911 responder is AMR.
16 Q. In Ahwatukee, the 911 responder is the City of
17 Phoenix.
18 A. For the fire, yes. But the ambulance is AMR.
19 Q. The -- the City of Phoenix doesn't show up and do
20 ambulance transports if you call 911 from Ahwatukee?
21 A. I don't believe so. They show up as fire. They
22 are the fire crew that shows through the City of Phoenix.
23 Q. But the system of 911 having a fire ambulance
24 respond is not unusual. That's something that happens all
25 over Maricopa County, right?

1 A. If you call 911, yes.
2 Q. And -- and it also happens all over the country,
3 right?
4 A. I can't really answer that.
5 MR. MURPHY: Foundation. Objection.
6 Foundation.
7 BY MS. FICKBOHM:
8 Q. So when you're placing a call for urgent
9 ambulance services and the -- during the algorithm with --
10 MS. FICKBOHM: If we could go back to the
11 algorithm. That's the Exhibit 230T, I believe.
12 ALJ EIGENHEER: 224.
13 MS. FICKBOHM: 224? Thank you.
14 ALJ EIGENHEER: This one?
15 MS. FICKBOHM: Yes. Thank you. 224. Is
16 that 221?
17 ALJ EIGENHEER: It's 224.
18 MS. FICKBOHM: Okay. Thank you.
19 BY MS. FICKBOHM:
20 Q. If -- if the physician at the urgent care doesn't
21 like the ETA, your folks call 911?
22 A. If the physician determines that the patient has
23 a risk of deterioration and cannot wait in the center
24 longer than 30 minutes, he has to make a determination to
25 call 911.

1 Q. So what if the physician thinks the 15 minutes --
2 the dispatcher says, "We can have somebody there in
3 20 minutes." What if is the physician is, like, "No, they
4 need to go quicker than 20 minutes"? Then what happens?
5 A. We will call 9- --
6 MR. MURPHY: Object. Form and foundation,
7 Your Honor. That's a -- that is an incomplete
8 hypothetical. That is an incomplete hypothetical. And
9 she should probably put more meat on the bones than what a
10 hypothetical patient she's talking about so we can give a
11 quality answer about whether 20 minutes is not long enough
12 or too long to wait for an ambulance.
13 MS. FICKBOHM: I think my question was if
14 the physician doesn't want to wait for 20 minutes, you're
15 going to pick up the phone and call 911.
16 MR. MURPHY: It implies the patient is
17 waiting for a transport for 20 minutes and that's too long
18 or not -- or just fine. So if we're going to do
19 hypotheticals, it should have meat on the bones for the
20 hypothetical patient. Each patient is different in a
21 certain circumstance.
22 MS. FICKBOHM: Well, we've heard a lot of
23 generalities today, and I'm just asking a general
24 question.
25 ALJ EIGENHEER: Okay. So if I understand

1 the question correctly, it's if the ETA is still within
2 the response time in the agreement, can they still decide
3 to go to 911?
4 MS. FICKBOHM: Correct.
5 ALJ EIGENHEER: Okay.
6 THE WITNESS: The decision to go to 911 is a
7 physician decision, so it's going to be up to our
8 physician to make that determination.
9 BY MS. FICKBOHM:
10 Q. So it's possible that a physician could say, "I
11 don't want this person here for 20 minutes. I want them
12 out quicker than that. Call 911"? It can happen?
13 A. It can happen.
14 Q. And you can't tell us how many times in 2018 a
15 scenario like that has happened where a physician has made
16 the decision "I don't want that patient sitting here that
17 long" when "that long" is still within 30 minutes but the
18 physician wants the ambulance there faster, correct? You
19 can't tell us how many times that has happened?
20 A. No.
21 Q. And you can't tell us how many times it happened
22 in 2017?
23 A. No.
24 Q. At either -- at any of the urgent cares we're
25 talking about, correct?

1 A. No.
2 Q. So you understand from this algorithm that's up
3 in front of us, 221, that, in part, this is designed to
4 address -- 224, I'm sorry. But, in part, this was
5 developed to address concerns you and your staff
6 articulated by being asked too many questions and feeling
7 like nothing was happening while those questions were
8 being asked, so AMR said, "Look, if it's urgent, we're
9 going to ask you three questions. What's the address?
10 Who's calling? What's the reason for the transport? And
11 then we're going to assign a unit and get that unit
12 rolling, but then we're going to ask you some more
13 questions while the unit is rolling to determine whether
14 or not we're sending you the appropriate resource." You
15 understand that, right?
16 A. No. As I stated before, this algorithm was meant
17 to provide an ETA early in the call so that we could make
18 the determination on whether or not we -- our patient
19 could wait or we needed to call 911.
20 Q. Okay. Well, let's look on the right-hand side
21 for urgent. So the algorithm is your person provides the
22 pickup address, who they are, what number they're calling
23 for, and the reason they're calling for a transport, and
24 at that point in time, AMR is assigning a unit and an ETA
25 is being developed. Do you see that?

1 A. Yes.
2 Q. So wheels are rolling even though the dispatcher
3 is still asking questions, correct?
4 MR. MURPHY: Objection to the
5 characterization of wheels are rolling. That's not clear.
6 That's inconsistent with her earlier testimony too.
7 MS. FICKBOHM: You know, he keeps adjusting
8 the answer for the witness. I would really like the
9 witness to have a chance to answer.
10 MR. MURPHY: Well, let me object --
11 MS. FICKBOHM: Long speaking objections
12 telling the witness what to say are inappropriate.
13 MR. MURPHY: Objection to the form of the
14 question, Your Honor, and the characterization of wheels
15 on the ground or whatever she said.
16 ALJ EIGENHEER: I don't believe we've had
17 any testimony that unit assignment means wheels are
18 rolling. But if that is your understanding and you want
19 to incorporate that into your question -- Unit assigned
20 doesn't necessarily mean wheels are rolling.
21 MS. FICKBOHM: So I'll rephrase the
22 question.
23 BY MS. FICKBOHM:
24 Q. Do you understand, Ms. Kells, that after those
25 first three questions, even though the dispatcher is

1 continuing to ask your staff questions, behind the scenes
2 what your staff can't see, the dispatcher is, in fact,
3 working to get a unit assigned and on its way to you?
4 A. That's what the algorithm indicates.
5 Q. And -- and as you sit here right now, can you
6 point to -- me to any facts to tell me that you know that
7 isn't how the algorithm works?
8 A. I can't speak to how the algorithm works for AMR.
9 Q. And so after the unit is assigned, the person
10 continues asking questions such as the patient's date of
11 birth, which will tell us how old they are, right?
12 A. Correct.
13 Q. Whether the patient's condition requires any
14 special equipment, that's an appropriate question, right?
15 A. At some point in time.
16 Q. Well, there's certain special equipment that some
17 ambulances might not have and others would have, so you
18 want to know what equipment you need to send, right?
19 A. Correct.
20 Q. Patient height and weight, that could be
21 important. Do we need a bariatric ambulance, for example,
22 correct?
23 A. Correct.
24 Q. Infectious precautions, in this day and age, do
25 you think it's bad to ask the question about whether any

1 infectious precautions need to be taken?
2 A. No. But it's not used to determine an ETA. And
3 that was our concern. We need an ETA at Number 3, and
4 so --
5 Q. Can you really say that? Because if the team
6 that's responding has to show up with hazmat suits because
7 you've got somebody who's perhaps been exposed to a
8 seriously infectious disease, it might take a few minutes
9 longer to get the vehicle rolling, right?
10 A. That information would have been provided in
11 Number 3. The medical reason for transport would have
12 been provided there.
13 Q. So you have a problem with Question Number 7 on
14 this?
15 A. I have a problem with this algorithm not
16 producing what we intended it to produce for us. Is an
17 ETA early in the process so we can make a determination to
18 either wait for an ambulance or to call 911.
19 Q. So don't they need the destination address,
20 Number 7?
21 A. They have a pickup address at Number 1.
22 Q. The destination address at Number 8.
23 A. That would have been given at Number 1.
24 Q. And the pickup address is where they're picking
25 it up and the destination Number 8 is where they're taking

1 them. Two different things, correct?
2 A. Correct. But that information is given at -- at
3 the 1, 2, and 3 questions.
4 Q. Well, wouldn't you think that if the person who
5 is taking this information received the answer to
6 Number 8, they wouldn't ask it -- when they asked the
7 first question, they wouldn't ask it again?
8 A. I would assume that.
9 MS. FICKBOHM: Can we scroll down, Judge?
10 BY MS. FICKBOHM:
11 Q. So after those 8 simple questions, you're going
12 to get an ETA, correct?
13 A. That's what it indicates here. Yes.
14 Q. So I want you to tell me the specific occasions
15 in the last six months where that hasn't happened where
16 you didn't get an ETA after those eight questions?
17 A. I cannot give you specific dates, but it happens
18 very frequently, which was our concern.
19 Q. So when you're defining calls as urgent, are you
20 using your definition of urgent or are you using the
21 contractual definition of urgent between Dignity and AMR?
22 A. Our physicians determine when our patients need
23 urgent transfer. I don't do that myself. It's a
24 physician's call to do that.
25 Q. And so your urgent cares are really in control of

1 what information is initially gathered about the patient
2 and maintained in medical records, correct?
3 A. Correct.
4 Q. And so if Dignity Health wanted specific
5 information about ambulance transports, including the
6 number of ambulance transports as compared to other
7 transports, alternative transports and all the minutia,
8 that's information your staff could be collecting if
9 Dignity wanted them to, correct?
10 A. If it was within our EMR, electronic health
11 record, it could be collected. If it's not in our EMR,
12 then it cannot be collected.
13 Q. I mean, we know from Linda Hunt's resume that,
14 you know, this is a 2.1 billion-revenue-per-year company
15 in Maricopa County, Dignity, with EBITDA of 94 million.
16 If Dignity wanted to invest the time and money in
17 collecting the type of information it purportedly wants to
18 see, it could do it and give you the staff to collect that
19 information, right?
20 MR. MURPHY: Calls for speculation.
21 THE WITNESS: I can't -- I can't answer
22 that.
23 BY MS. FICKBOHM:
24 Q. There's -- there's no practical reason that your
25 staff can't be collecting, reporting, and giving to

1 Dignity information about 100 percent of the ambulance
2 transports requested, correct?
3 MR. MURPHY: Objection. Foundation.
4 BY MS. FICKBOHM:
5 Q. Any practical reason?
6 MR. MURPHY: Objection.
7 ALJ EIGENHEER: You may answer the question
8 if you have an opinion.
9 THE WITNESS: If it's within our EMR, we
10 could gather it and put it into the EMR. If it is not
11 within the EMR, we are not going to gather it. There's
12 nowhere to put it.
13 BY MS. FICKBOHM:
14 Q. But you could develop a form or an electronic
15 database that allows you to put whatever information
16 Dignity wants to collect, then, correct?
17 A. That is beyond my ability to produce a form
18 within our EMR.
19 Q. Within your --
20 A. Within our electronic health record.
21 Q. But those electronic health records have been
22 developed and installed by Dignity, so it's up to Dignity
23 as a whole to decide what information is being collected,
24 correct?
25 A. Correct.

1 Q. It's beyond your capacity?
2 A. Yes.
3 Q. But Dignity itself could decide to collect it,
4 and then you would have the ability to look at that
5 information, right?
6 A. Yes.
7 Q. So you don't collect numbers, for example, about
8 how many people leave your urgent care in their personal
9 vehicle?
10 A. No, it's not in the EMR.
11 Q. Or how many people leave using, these days, Lyft
12 and Uber and alternative transportation?
13 A. No.
14 Q. You do see those, don't you?
15 A. Yes.
16 Q. More and more, right?
17 Or -- or that leave via a wheelchair or
18 ambulance?
19 A. No.
20 Q. And isn't it true that some people that come --
21 even -- maybe that are urgent, they don't want an
22 ambulance because they're worried about how much it's
23 going to cost. You see those people, right?
24 A. Yes.
25 Q. And -- and your doctor says to them, "No, I think

1 you need to leave in an ambulance." And they're, like,
2 "It's going to take 10 minutes. My wife is right outside.
3 I'm -- I'm going. The hospital is down the street,"
4 right?
5 A. Yes.
6 Q. And so you keep statistics on how often that
7 happens?
8 A. No.
9 Q. Would you agree with me that as of -- at least
10 January of 2017, there was a big push by Dignity in order
11 to keep the patients that you see in the urgent care in
12 the Dignity system?
13 MR. MURPHY: Objection. Foundation.
14 ALJ EIGENHEER: If you know.
15 MR. MURPHY: And relevance.
16 THE WITNESS: Sorry. I can't answer that
17 question.
18 MS. FICKBOHM: Okay. Can we pull up
19 CA-232O?
20 BY MS. FICKBOHM:
21 Q. The reason I asked you, you've made that
22 statement in writing, so . . .
23 ALJ EIGENHEER: I'm sorry? 232O?
24 MS. FICKBOHM: I'm sorry. 232O.
25 ALJ EIGENHEER: I don't have that.

1 MS. FICKBOHM: I'm sorry. It must be --
2 One second. It must be . . .
3 ALJ EIGENHEER: How about 230O?
4 MS. FICKBOHM: 230O?
5 Can you scroll down, Judge? No. I think
6 it's got to be -- No, I think it's got to be 2- -- If
7 you hold on a second, Judge, I'll find it. I don't mean
8 to make you run around with that.
9 Oh, 233O. I don't think that's the one
10 either.
11 BY MS. FICKBOHM:
12 Q. I just saw a statement somewhere from you in a
13 communication with Rebecca Haas about being concerned that
14 maybe AMR was diverting a patient and you saying there had
15 been a big push by AMR [sic] to keep transports in-house.
16 MS. FICKBOHM: Yeah, that would be 230O. If
17 you could scroll down. That's the page I'm looking at.
18 So -- No, that's not the one.
19 ALJ EIGENHEER: This is the one I called up
20 earlier.
21 MS. FICKBOHM: Oh, gosh. Where did I see
22 that? Maybe it was Rebecca Haas that said that.
23 I'll move on. I'm sorry.
24 BY MS. FICKBOHM:
25 Q. So you are not aware of any intention by Dignity

1 asking its staff to make sure that people stay within the
2 Dignity system when they're transferred out of urgent
3 cares?
4 A. No. Determination of where a patient goes is
5 made by a physician based upon the patient's condition and
6 what is needed by that patient.
7 Q. So, Ms. Kells, are -- you're aware that AMR and
8 the other CON holders in Maricopa County are required by
9 the Department of Health Services to take care of
10 everybody that they serve without focusing on any one
11 entity, like Dignity Health, in particular, right?
12 A. I'm not aware of the CON requirements, no.
13 Q. You're not aware of the CON --
14 A. I'm not aware of the CON requirements.
15 Q. So would that make sense to you that a provider
16 that covers all of Maricopa County would have to take care
17 of all patients that they're supposed to serve, not just
18 one facility?
19 A. Again, I can't -- I can't answer a question --
20 MR. MURPHY: Objection.
21 THE WITNESS: -- about the CON requirements.
22 BY MS. FICKBOHM:
23 Q. Okay. Tell me how many incidents, as you sit
24 here today, you can point the judge to or the Department
25 to, looking back to late 2015, where patient morbidity or

1 mortality was impacted by what you're complaining about
2 here today?
3 A. I don't have that information.
4 Q. Can -- can you tell me any occurred?
5 A. I don't have that information.
6 Q. What about any specific incidents where patient
7 safety was compromised?
8 A. I can't give you specific examples.
9 Q. Any specific incidents where AMR's responses were
10 outside of its certificate of necessity-required arrival
11 times?
12 A. Yes, they're on our EMH call log.
13 Q. Outside of their CON response requirements?
14 A. Outside of the 30 minutes, yes.
15 Q. And -- and you understand that AMR's required to
16 meet annual averages, so tell me when you know that AMR
17 fell out of compliance with its CON requirements.
18 A. I am not -- I can't speak to CON requirements.
19 Q. So you would agree with me that if AMR is doing
20 12,000 IFT transports for Dignity facilities and that's
21 just a small part of the interfacility transports it's
22 doing, if it's late -- shows up later than 30 minutes at
23 Ahwatukee seven times in 2017, that that's necessarily
24 going to mean that it's not in compliance with its
25 certificate of necessity?

1 MR. MURPHY: Object. Foundation.
2 THE WITNESS: I can't speak to that.
3 BY MS. FICKBOHM:
4 Q. Well -- and the contract itself that AMR has with
5 Dignity has a little bit of "something extraordinary
6 happening, you couldn't show up on time," room built into
7 it too, correct?
8 MR. MURPHY: Objection. Foundation.
9 ALJ EIGENHEER: If you know.
10 THE WITNESS: I do not know.
11 BY MS. FICKBOHM:
12 Q. What you know is that when your people pick up
13 the phone, they want to hear "An ambulance is immediately
14 on its way to me right this very second and we want it
15 here now," correct?
16 A. No.
17 Q. We heard a witness testify earlier in this
18 hearing about Las Vegas patients having to wait 4, 6, and
19 even 12 hours for a pickup. You don't have any of those
20 kind of circumstances to tell us about, do you?
21 A. No.
22 Q. And you would agree with me if it's a true
23 emergency, that 911 should be called?
24 A. If it meets the criteria for 911, we call 911.
25 Q. Do your staff ever make mistakes?

1 A. Everyone makes mistakes, yes.
2 Q. And that doesn't that your staff is bad, correct?
3 A. Correct.
4 Q. And there's been times when you've brought a
5 mistake to AMR's attention and they said, "You know what?
6 You're right. We screwed that up," right?
7 A. Yes.
8 Q. And the fact that you -- And that's because,
9 like you, they hire human beings, right?
10 A. Correct.
11 Q. So you get a dispatcher that's new, has not been
12 properly trained, that doesn't do things right, you
13 complain; Todd Jaramillo or somebody else gets back to you
14 and says, "You are right. We screwed that up. This
15 person needs to be trained."
16 MR. MURPHY: Objection.
17 BY MS. FICKBOHM:
18 Q. That's -- that's the way the system is supposed
19 to work, correct?
20 MR. MURPHY: Objection. Foundation.
21 There's no foundation for that question at all. Is this
22 an actual circumstance? This calls for speculation. I
23 don't want to provide speaking objections. There's
24 foundational problems, and it is calling for speculation.
25 ALJ EIGENHEER: Is this a hypothetical?

1 MS. FICKBOHM: I think that in the ambulance
2 business, there's this back-and-forth all the time between
3 customers and ambulances about how "Man, you did a great
4 job, but over here you could have done it better," and
5 there's this constant flow of information back and forth.
6 And that doesn't mean the urgent care is bad and it
7 doesn't mean that the ambulance transport provider is bad
8 either. And I'm just asking her if that's her sense of
9 things that AMR has owned mistakes and said, "We'll work
10 to fix those."
11 ALJ EIGENHEER: You may answer, to the
12 extent you have information.
13 THE WITNESS: Our experience is that they
14 don't own their mistakes, and what they do is they justify
15 and they provide data to support the decisions they have
16 made. Rarely do they say they made a mistake. That has
17 happened, but rarely is that the answer to our concern
18 with them.
19 MS. FICKBOHM: So, Judge, could we go to
20 230P? And scroll down.
21 BY MS. FICKBOHM:
22 Q. So this is where Rebecca Haas is talking to you
23 about diversion.
24 MS. FICKBOHM: Please scroll down a little
25 bit further.

1 BY MS. FICKBOHM:
2 Q. So we're looking at 230P, a January 24, 2017,
3 email from you. Would you read that to yourself?
4 A. Yes. "This was a verbal agreement and
5 expectation of senior leadership. Our patients are
6 considered patients of the hospital, so they can't refuse
7 to take them unless they can't provide the care needed.
8 There is a huge push to keep our patients in-house. Was
9 there an issue? They don't want to take them? Who is
10 having an issue with this? AMR or someone from our
11 hospital ED?"
12 Q. So here you do acknowledge on January 24, 2017,
13 you were aware that there was a huge push by Dignity to
14 keep its patients in-house, correct?
15 A. This is a Maricopa facility, Maricopa patient.
16 Q. You're writing this on behalf of --
17 A. Yes.
18 Q. But you were aware --
19 A. Our practice is to keep our patients in-house.
20 MS. FICKBOHM: So, Judge, could we turn to
21 232C? I'm not sure if this one has already been admitted.
22 If this is -- Oh, because this was a Maricopa one. Okay.
23 I'll -- I'll move on.
24 MR. MURPHY: I'll gladly stipulate to its
25 admission.

1 MS. FICKBOHM: I was going to offer this as
2 an example of an acknowledgment.
3 BY MS. FICKBOHM:
4 Q. You're not telling us that AMR never acknowledges
5 that it makes mistakes and owns them?
6 A. I never say never, so no.
7 Q. And would you agree with me that when call intake
8 is happening, dispatch needs to get information in order
9 to get the right resource to the right patient, correct?
10 A. Correct.
11 Q. And sometimes that takes a little bit of time,
12 correct?
13 A. Correct.
14 Q. And if your urgent cares are busy and the staff
15 is feeling pressured and there's more people to wait to
16 get in, that can feel like this is an extraordinary amount
17 of time when they're really just trying to collect
18 relevant information, correct?
19 A. I suppose it could feel that way.
20 Q. Tell me, sometimes when a patient walks into the
21 urgent care, do you or your staff recognize immediately
22 this person is going to need an ambulance transport?
23 A. Yes.
24 Q. But what do you do before you contact the
25 ambulance transport company?

1 A. Patients are evaluated by a physician.
2 Q. Okay. And then what?
3 A. Then a determination is made on what needs to be
4 done for that patient.
5 Q. Okay. Then what?
6 A. If the patient's being transferred, we call the
7 ambulance company. If the patient needs 911, we call 911.
8 Q. Before you call the ambulance company, do you
9 contact the facility that you expect will receive the
10 patient and get authorization from that facility to send
11 the patient there?
12 A. We can if it is our own hospital. We don't a
13 hundred percent of the time. We will if we need to
14 activate a cath lab or get specialized services or make
15 sure they can take the patient. If we transfer our
16 patients outside of Dignity Health, then we always call
17 and receive authorization or an approval to accept.
18 Q. So when a patient walked in and you know this
19 patient is going to need to be transferred, before they're
20 evaluated -- by the physician -- Which could take a
21 little bit of time, right? Evaluating by the physician?
22 A. Not necessarily, no.
23 Q. Sometimes?
24 A. Not if we walk in and we know that they're going
25 to need to be transferred, no. They -- they are bumped up

1 and seen by the physician.
2 Q. Tell me, how many -- how often your staff picks
3 up the phone before the physician evaluation is done,
4 before they contact the receiving hospital, and say to the
5 person in dispatch, "Hey, we've got somebody here we know
6 is going to need to go. We're going to be calling you in,
7 like, 5 or 10 minutes. Just wanted to give you a
8 heads-up"?
9 A. No. Never.
10 Q. So -- so that would be considered a prealert,
11 right?
12 A. I'm not sure what that's considered. It's not
13 part of our process.
14 Q. Okay. So you -- you don't have any processes in
15 place to give the ambulance transport companies a heads-up
16 that they are going to be receiving an urgent request for
17 an ambulance before you folks have gone through all of
18 your steps to process the patient, correct?
19 A. Correct.
20 Q. Don't you think that that would help be
21 efficient -- the system be more efficient if you did that?
22 A. I can't answer that question.
23 Q. Instead, what the system has sort of evolved to
24 be is what will be called an on-demand system.
25 MR. MURPHY: Foundation -- Objection.

1 Foundation.
2 MS. FICKBOHM: She was --
3 BY MS. FICKBOHM:
4 Q. You were nodding.
5 A. Okay.
6 Q. So you agree with that, correct?
7 ALJ EIGENHEER: If you know.
8 THE WITNESS: No, I -- I don't know.
9 BY MS. FICKBOHM:
10 Q. When your folks pick up the phone and call, they
11 expect to immediately have an ambulance assigned to them,
12 correct?
13 A. No. They expect to provide some basic
14 information and be given an estimated time of arrival for
15 an ambulance crew.
16 Q. And the determination about whether that
17 estimated arrival time is appropriate or not is made by
18 your physician?
19 A. Yes.
20 Q. And if your physician doesn't like the time that
21 they're given, even if it's less than 30 minutes, they'll
22 call 911?
23 A. They will make that determination, yes, based on
24 the patient's condition.
25 MS. FICKBOHM: I don't have any more

1 questions. Thank you.
2 ALJ EIGENHEER: Anyone else?
3 MR. BELANGER: I just have a couple, Your
4 Honor. Can we -- Oh, I'm sorry.
5 ALJ EIGENHEER: Sorry. 230P?
6 MS. FICKBOHM: I'm sorry?
7 ALJ EIGENHEER: 230P? Do you wish to offer?
8 MS. FICKBOHM: No.
9 MR. BELANGER: Could we look at 224 --
10 CA-224 and CA-17? So 224 first.
11
12 CROSS-EXAMINATION
13 BY MR. BELANGER:
14 Q. Ms. Kells, my name is Jim Belanger. I represent
15 Maricopa Ambulance.
16 If we look at 224 --
17 MR. BELANGER: 224. I'm sorry.
18 ALJ EIGENHEER: I apologize.
19 MR. BELANGER: No problem.
20 BY MR. BELANGER:
21 Q. So on this chart --
22 MR. BELANGER: If you go down a little bit
23 to the middle of this chart.
24 BY MR. BELANGER:
25 Q. I believe this was already admitted.

1 You see an ETA being developed, right?
2 A. Correct.
3 Q. Is the ETA -- do you understand that to be the
4 scheduled time when -- when you expect the ambulance to
5 arrive?
6 A. Yes.
7 MR. BELANGER: Okay. Let's look at CA-17.
8 And down -- down, Your Honor, to paragraph 29 --
9 Section 29.
10 BY MR. BELANGER:
11 Q. Do you see where it says "Response Time
12 Standards"? Says "Urgent Ambulance Services"?
13 A. Yes.
14 Q. Okay. And that's what you testified are
15 generally -- those are the kind of transports that are
16 generated from the facilities that you oversee?
17 A. Yes.
18 MR. MURPHY: Object- -- objection.
19 Mischaracterizes the testimony. Her definition of urgent
20 transport is definitely not that.
21 MR. BELANGER: I'm not -- I'm not suggesting
22 that it is.
23 MR. MURPHY: I just wanted to be clear. I
24 thought you had.
25

1 BY MR. BELANGER:
2 Q. You've -- you've testified that your facilities,
3 when they require ambulance transports, are generally
4 urgent transports, at least in your mind?
5 A. Correct.
6 Q. So if we look at this provision, which is in a
7 paragraph, this is a provision in a contract -- a proposed
8 contract between Dignity and RBR/Community Ambulance. It
9 says that response time must be immediate and arrive
10 within 30 minutes of the requested at-the-bedside pickup
11 time from a licensed health care facility. So do you
12 understand that to mean that if you say, for example, it's
13 4:20 and you call up RBR under this contract and you
14 say -- and they agree that they'll -- the time they will
15 arrive is 4:35, do you understand that under the contract,
16 they have until 5 minutes past 5 o'clock to arrive?
17 A. My understanding is they have 30 minutes from the
18 time that we call.
19 Q. So you don't -- you don't understand their
20 contractual provision to mean they're allowed to arrive
21 within 30 minutes of the scheduled arrival time?
22 A. Not sure what you're asking.
23 Q. I'm asking what -- This is the contract that's
24 proposed between RBR and Dignity. And it says -- that's
25 what I'm trying -- That's -- that's my confusion. You

1 say that there's an ETA. We looked at 224 -- Exhibit 224
2 and you say you call up, you get an estimated time of
3 arrival from the ambulance company. Let's say you call at
4 4:21 and they say the estimated time of arrival is 4:35.
5 That's the scheduled time of arrival. Do you understand
6 that?
7 A. Yes.
8 Q. Do you understand that under the contract that
9 Dignity proposes to enter into with RBR, that they will
10 have 30 minutes past the requested at-the-bedside pickup
11 time? So in other words, if you say "We want you here at
12 4:35," they can be there within 5:05 and still be
13 compliant with their contract?
14 A. That's not my understanding, but I am not -- I
15 can't speak to this contract.
16 Q. Do you know if that's the Department's
17 understanding of -- the Department of Health Services?
18 A. I do not.
19 Q. That's what you expect to happen, but you have no
20 idea what this contractual provision actually means?
21 A. I cannot speak to this contract.
22 Q. Do you have any idea or opinion on the number of
23 times your urgent care centers would have to call 911 if
24 Community Ambulance is given a CON?
25 A. I would not have that information.

1 MR. BELANGER: Thank you, Ms. Kells. I
2 don't have any more questions.
3 ALJ EIGENHEER: Cross?
4 MS. HOFMEYR: Thank you, Your Honor. I just
5 have one question.
6
7 CROSS-EXAMINATION
8 BY MS. HOFMEYR:
9 Q. My name is Adriane Hofmeyr. I represent
10 ABC Ambulance.
11 So you do have an understanding what this
12 process is about, right? That Dignity is trying to get
13 another company by the name of RBR to get a CON to come
14 and operate in Arizona, right?
15 A. Yes.
16 Q. So I would like to show you the contract that RBR
17 operates under in Nevada for Dignity.
18 MS. HOFMEYR: And it's ABC-31, please,
19 Judge. You can go to page 3.
20 BY MS. HOFMEYR:
21 Q. So these are the current response times that this
22 company that Dignity's trying to get into Arizona performs
23 under in Nevada. So you might have to take my word for it
24 that this is the contract between RBR and Dignity for
25 Nevada.

1 MR. MURPHY: Is it? Is that a question?
2 I'm sorry.
3 MS. HOFMEYR: No. I'm -- I'm telling the
4 witness. And you can object if you like, if you think
5 this contract --
6 MR. MURPHY: I'd like to object on the basis
7 that the agreement in Nevada is not relevant. The
8 response times in Nevada are not relevant to this CON
9 hearing. And she lacks foundation. She's a clinical --
10 she's a clinical staff of Dignity Health. She's a
11 regional director of the urgent cares. She's never read
12 the --
13 MS. HOFMEYR: Judge, I would like to get a
14 feel from this witness if she think thinks this
15 applicant's current response times would serve their
16 purposes. And she can opine on that or not. She can tell
17 us if she doesn't want to offer an opinion on these
18 response times. These are the current response times of
19 this applicant in Nevada.
20 MR. MURPHY: The response times that they
21 would agree to in Arizona have already been put into the
22 record, and those are the applicable response times that
23 apply to this case, this CON. Those Nevada response
24 times, with respect to this witness, are irrelevant.
25 ALJ EIGENHEER: Okay. So the response times

1 from the contract that has been executed but doesn't
2 really exist yet, as I've heard?
3 MR. MURPHY: Proposed agreement that's not
4 yet been approved by DHS, yes, Your Honor.
5 ALJ EIGENHEER: Okay. So it's subject to
6 change?
7 MR. MURPHY: It is subject to change.
8 ALJ EIGENHEER: I'll allow it to the extent
9 it might garner some relevant testimony.
10 MS. HOFMEYR: Thank you, Judge.
11 BY MS. HOFMEYR:
12 Q. So this paragraph 3.3 is called "Timeliness of
13 Service." And would you agree with me that the "Provider
14 agrees to provide St. Rose with ambulance transport
15 services upon request" -- I'm going to jump ahead a little
16 bit. "Services will be provided 24-hours per day, 7 days
17 per week. Provider shall use its best efforts to provide
18 the transportation services requested within the period
19 requested . . . ." And then the last sentence is "Calls
20 made by St. Rose to Provider will be returned within
21 10 minutes of the call and patient pick-up and actual
22 departure time will occur within 30 minutes of the
23 pre-arranged mutually agreed time."
24 So really, all this provision is saying is
25 they're going to return the call within 10 minutes.

1 You've got to have a response time. And I will note that
2 the Department would like you to call these arrival times,
3 not call them response times. Mr. Ray knows they are more
4 accurately called arrival times, which is what you call
5 them. The only obligation in this paragraph here is to
6 return a call within 10 minutes?
7 MR. MURPHY: Objection. Foundation.
8 Relevance. This isn't the controlling document regulating
9 Community Ambulance in Nevada. Those are franchise
10 agreements, which people have talked about and there's
11 been testimony about. It's totally irrelevant, Your
12 Honor.
13 MR. BELANGER: Based on that, I would move
14 to strike everything that Mr. Davis talked about.
15 MS. FICKBOHM: Join.
16 MS. HOFMEYR: Join.
17 MR. MURPHY: We're talking specifically
18 about response times under an agreement that we haven't
19 established that Ms. Kells has any foundation to speak
20 about.
21 MS. HOFMEYR: I'm not asking -- Judge, I'm
22 not asking for opinion on the agreement and its
23 advisability. I want to know if she thinks those would
24 fix her problems at her facilities in Maricopa.
25 MR. MURPHY: You haven't -- you haven't

1 established what the circumstances are for timeliness of
2 service under this particular agreement.
3 ALJ EIGENHEER: Would Community Ambulance
4 calling you back within 10 minutes of you making a call
5 meet your needs?
6 THE WITNESS: No.
7 ALJ EIGENHEER: Thank you.
8 MS. HOFMEYR: Thank you, Judge.
9 I have no further questions.
10 ALJ EIGENHEER: Cross?
11 MR. RAY: That last one went by quickly.
12 It's late in the day, Ms. Kells.
13
14 CROSS-EXAMINATION
15 BY MR. RAY:
16 Q. I am the attorney for the Bureau of EMS. We are
17 the regulator of certified ambulance companies.
18 MR. RAY: Judge, if you'll pull up CA-17.
19
20 BY MR. RAY:
21 Q. And let's just -- I want to make sure that's the
22 RBR agreement, proposed. That is the executed RBR
23 agreement that will go into effect if the applicant gets a
24 CON. Do you understand that?
25 A. Yes.

1 Q. Okay. So these response standards and response
2 times -- and you've already heard my correction of the
3 concept, but let's assume "response times" are the right
4 word to use for this contract purpose. If this contract
5 was in effect today, is it your testimony that the UPCs
6 that you are the director for would have zero calls
7 falling within the non-urgent ambulance services based on
8 the history you've discussed?
9 A. Yes.
10 Q. And your -- and the basis for not having any
11 patient calls in there -- in that fractile is that the
12 physicians at your -- your urgent care centers determine
13 in every case that they fall within an urgent ambulance
14 requirement for those patients needing ambulance services?
15 A. Correct.
16 Q. Okay. Sorry. That was an awkward question.
17 Do you know what conversations occurred
18 between the applicant -- between the applicant and Dignity
19 in setting those categories of calls?
20 A. No.
21 Q. Do you think your UPC -- I call them UPCs. Sorry
22 about that -- your urgent care centers would be a factor
23 in those discussions?
24 A. I can't answer that.
25 Q. Okay. All right. Do you know what the licensing

1 requirements are for urgent care centers generally?
2 A. I know for mine.
3 Q. Yes. For yours. You've testified that --
4 A. Yes.
5 Q. -- they qualify under a hospital license,
6 correct?
7 A. They are licensed under the hospital.
8 Q. Okay. Do you know if it is acceptable to the
9 office of health care institution licensing that your UPCs
10 called 911 in the manner you have testified to in all
11 occasions?
12 A. I don't know that.
13 MR. RAY: Okay. I don't have any other
14 questions. Thank you.
15 ALJ EIGENHEER: Redirect?
16 MR. MURPHY: No questions, Your Honor.
17 ALJ EIGENHEER: You may step down.
18 Do you want to start with another one?
19 MR. MURPHY: Can we take a two-minute
20 bathroom break? Are we going until 5:00 today? Is that
21 the plan?
22 ALJ EIGENHEER: We can.
23 MR. MURPHY: Can we use the bathroom?
24 ALJ EIGENHEER: Yes.
25 We're off the record at this time.

1 (A recess ensued between 4:31 p.m. to
2 4:39 p.m.)
3 ALJ EIGENHEER: Okay. We are back on the
4 record.
5 Next witness.
6 THE WITNESS: Brandon Hestand, Your Honor.
7 ALJ EIGENHEER: Please have a seat. Please
8 raise your right hand.
9
10 BRANDON HESTAND,
11 called as a witness on behalf of RBR Management, LLC,
12 herein, having been first duly sworn by the Administrative
13 Law Judge to speak the truth and nothing but the truth,
14 was examined and testified as follows:
15
16 ALJ EIGENHEER: Would you please state your
17 name, spelling it for the record.
18 THE WITNESS: Brandon Hestand. It's
19 B-r-a-n-d-o-n H-e-s-t-a-n-d.
20 ALJ EIGENHEER: Proceed.
21
22 DIRECT EXAMINATION
23 BY MR. MURPHY:
24 Q. Mr. Hestand, thank you for being here.
25 Despite our hairstyles and facial hair,

1 we're not related. Is that right?
2 A. That's correct. But it is a cool hairdo.
3 Q. I will also say on the record that people have
4 called me -- called me Brandon for years even though my
5 name is Brendan, so I appreciate that too.
6 You've already stated your name for the
7 record.
8 A. Yes, sir.
9 Q. Can you tell me who your employer is, please?
10 A. Yes, I work for Dignity Health.
11 Q. And what's your role with Dignity Health?
12 A. I'm the paramedic liaison for Chandler Regional
13 Medical Center and Mercy Gilbert Medical Center.
14 Q. And can you talk about your educational and work
15 background in the -- in the medical field, please?
16 A. Absolutely. So I have a B.S.N. in nursing. Been
17 a nurse for eight years. Before a nurse, I was a patient
18 care tech on the floor. So I've been in the ER for going
19 on 13 years.
20 As far as the job itself, what I do now as a
21 paramedic liaison is I work with the EMS providers, the
22 firefighters, first responders, basically providing them
23 feedback on -- on patient care issues. We talk about
24 training, CEs, which is continuing education. Any
25 concerns that come up with patient care or time as far as

1 transfers, delays in care, basically I kind of am the
2 go-between between the ER and those providers. My -- my
3 job and my hope is that I smooth the road.
4 Q. As a liaison --
5 A. Correct.
6 Q. -- you smooth the road?
7 A. Correct.
8 Q. Between?
9 A. Between the hospital and EMS or firefighters --
10 you know, fire departments if there is a conflict or
11 concern.
12 Q. So are you currently working as an R.N. as well
13 as an EMS liaison?
14 A. No. This job doesn't allow me to do much bedtime
15 anymore, so --
16 Q. So when was the last time you worked as an R.N.?
17 A. A shift as an R.N. was four years ago.
18 Q. Okay. 2014?
19 A. Yes, sir.
20 Q. Okay. Does -- does -- So your job as an EMS
21 liaison, it includes private ambulance companies as well
22 that you liaise with?
23 A. That's correct.
24 Q. Okay. And would you walk us through the process
25 of how a complaint may come to you and how you then

1 approach a private ambulance company and discuss it?
2 A. Sure. So typically, what will happen is a nurse
3 or provider in the ER -- it could be a physician -- that
4 will come to me and say they had an issue, whether it was
5 transfer of care, whether it was a patient care issue
6 itself. Where the care was not appropriate, they'll come
7 to me, give me the circumstances behind it. I'll usually
8 get a patient name, date of birth, medical record, and
9 they'll -- they'll tell me what they experienced. Then
10 I'll look into the patient chart. I'll see what I can
11 find. Then typically, what I have -- luckily is I have
12 access to most of the ePCRs that the providers use, which
13 is the electronic patient care record, which is different
14 than the electronic health record that we have in the
15 hospital. They're two separate things. So I'll pull both
16 of those reports up and I'll compare them side by side.
17 I'll look at what the EMS providers documented, I'll look
18 at what the ED physician documented, and then I'll send it
19 to whoever the provider is, whether it's a fire department
20 or whether it's a private ambulance company, and I'll say,
21 "This is what I found. This is the complaint that I've
22 been given. Would you please look into it?" So I really
23 try to be as neutral as I can on it and provide just the
24 facts that I have in front of me.
25 Q. So can you give me a list of the clinicians,

1 staff of Dignity Health -- the different types of
2 clinicians and staff that have these complaints about
3 private ambulance service and report complaints to you
4 about private ambulance service?
5 A. Sure. Within the ED, it would be physicians;
6 P.A.s, physician assistants; nurse practitioners; R.N.s;
7 and at times paramedics that work within the ER with us.
8 Q. Paramedics?
9 A. Correct. So they have a role within the ER as a
10 patient care as well. They just have an expanded scope as
11 opposed to someone that would be a PCT with no
12 certification. They can start IVs; they can administer
13 fluids. They are instrumental on how we are able to run
14 our codes. So the paramedics play a huge role within the
15 ED for us.
16 Q. And paramedics have complaints about private
17 ambulance service?
18 A. Sure.
19 Q. What sorts of complaints do paramedics have about
20 private ambulance services?
21 A. Typically, when it comes from a paramedic, it's
22 from something that they've seen in their experience in
23 the field related to patient care, that's typically what
24 it looks like when it comes from a paramedic within the
25 ER.

1 Q. So what -- what sorts of complaints do you get
2 from, in the emergency department, physicians, P.A.s,
3 nurses? What are the types of complaints that you receive
4 from these practitioners?
5 A. Well, they'll range. The -- the biggest one is
6 the timeliness for response. So if they'll call and want
7 to transfer a patient to another facility, we'll get an
8 ETA for whatever that time is that they throw out there,
9 whether it's 20, 30 minutes, and then they'll show up
10 after that time frame. Excuse me.
11 There's also some concerns about the type of
12 equipment that is not available on some of those
13 transports. I can give you examples, if you like.
14 It's -- I don't want to get too much into the weeds on
15 this. I'm happy to talk to whatever would help.
16 Q. Well, yeah, if you could explain what you mean by
17 equipment.
18 A. So one of the things that we've run into on our
19 side from specifically at Mercy Gilbert is we'll transfer
20 patients that come out of the cardiac cath lab with
21 Impella pumps, which is a cardiac device that helps the
22 blood flow through the heart. That equipment is something
23 that you require some specialized training, and, to the
24 best of my knowledge, no ground transport company carries
25 or has people trained in that -- use of that equipment.

1 So we have to currently fly those patients from Mercy
2 Gilbert to Chandler Regional. The -- the good part about
3 that is the medics and the nurses that are on the flight
4 crews are absolutely proficient and trained very well in
5 those use of those devices. The bad part is, of course,
6 anytime you fly, there's a risk. Also, there's a cost.
7 Those two things right there, when you explain that to a
8 family member, for an 8-mile trip -- it's hard to convey
9 that to a family member who's going to go, "Hey, now I
10 have a -- whatever thousands of dollar bill." I don't
11 know what that cost is for air medical because that's not
12 my area. But we know it's more expensive than a ground
13 transport.
14 Q. Well -- so this is a complaint you've heard from
15 physicians, P.A.s, or nurses --
16 A. Correct.
17 Q. -- that the equipment was not on the ambulance?
18 A. Correct.
19 Q. And then what other sorts of complaints have you
20 heard about equipment?
21 A. There's been some IV pump issues, and when I say
22 "IV pump," it was a lack of equipment, not necessarily
23 equipment matching up like we would like to see. But
24 we've had -- we've had some calls where we've asked for a
25 crew to come in with -- on a pump -- the patient's being

1 shipped out on a drip and they need to be maintained on an
2 IV pump. It's a drip that cannot be maintained to
3 gravity, so it has to be calculated and run through a pump
4 specifically. And they've shown up on occasion without
5 one. The delay at that point is that we have to then call
6 and get another unit en route with the right equipment.
7 So it -- it happens.
8 Q. Do you have a specific example of when something
9 like that happened?
10 A. Not off the top of my head. I know it has
11 happened. I -- I don't have anything off the top of my
12 head as far as the -- a specific occurrence. But there --
13 there have been circumstances where we've had that occur
14 within the ED where we've had to delay, call them back
15 out. They've had to -- Actually, we had one where they
16 had to -- actually diverted a unit to the 911 system and
17 then that unit was unavailable and the second unit didn't
18 have an IV pump. There was a lot about that call in
19 specific. I don't have it in front of me, but there was a
20 lot of things about that call that didn't fit right. And
21 that caused a delay in care.
22 Q. So let's back up.
23 A. Okay.
24 Q. IV pump was an issue, a lack thereof.
25 A. Uh-huh.

1 Q. Any other equipment issues that clinicians have
2 complained about with respect to ambulance transport
3 service?
4 A. Not that I can recall off the top of my head.
5 Q. Okay. Wrong -- Any other complaints that you
6 deal with in your role as an EMS liaison?
7 A. Timeliness is probably one of the biggest ones,
8 unfortunately. That is the one that seems to come up the
9 most.
10 Q. Okay. And how do you -- When you receive a
11 complaint about timeliness, what -- how do you process
12 that complaint?
13 A. So if it's done -- if I know a right away -- If
14 I happen to be in the ER and I'm there when it happens,
15 then I can usually make a call and I get ahold of --
16 Whether it's someone at AMR, whether it's, you know,
17 another unit, I can usually call them, talk to them about
18 it and address it in real time if I --
19 Go ahead.
20 Q. Who do you speak -- With AMR, who do you speak
21 with when you -- when you deal with AMR on complaints?
22 A. Currently, it's Alex Lopez.
23 Q. And how long have you dealt with Alex Lopez?
24 A. It's been a few months. He's a -- great
25 communication with the guy. I have no issues with him.

1 But before that, it was Alison Skinner. And I -- and I
2 don't honestly recall that break in time -- I just don't
3 recall when Alex came on and Alison went out.
4 Q. And so if there's an issue that arises and it's
5 happening as -- as you are dealing with it, you can call
6 Alex Lopez?
7 A. Uh-huh.
8 Q. And in the past, you've called Alison Skinner?
9 A. Correct.
10 Q. Okay. And what if the issue is not happening
11 sort of as you're being told about it? What do you do
12 then?
13 A. Usually I'll get that communication to me either
14 via email or I'll get a voice mail left on my phone if I
15 don't happen to be at -- at the facility. And then when I
16 get that, I'll put -- Again, I'll do the same thing that
17 I do with those follow-ups. I'll -- I'll kind of do some
18 fact-finding first. And if -- if the email comes in and I
19 need to reword it, wordsmith it a little bit so that I
20 keep things smooth and even -- because I really don't want
21 to send something that's inflammatory. This is all about
22 relationships. So I try to -- I make sure that the
23 verbiage that I send is correct and that it addresses the
24 issue or concern. And --
25 Q. What do you -- what do you mean when you say you

1 have -- you revise emails --
2 A. Correct.
3 Q. -- you receive from clinicians making complaints
4 to you?
5 A. Correct.
6 Q. Why do you have to do that?
7 A. Sometimes the tone, the anger, you can tell
8 they're frustrated because they're not happy with the
9 situation. And I don't like -- I don't want to send that
10 message to my partners in the community, whether it's --
11 again, whether it's a private ambulance company or whether
12 it's a fire department. At the end of the day, my job is
13 to be the liaison and go-between, not to -- not to flare
14 tensions up or make things worse.
15 Q. And ultimately, the beneficiary of your job is
16 who?
17 A. Our staff, right? I mean, am I understanding the
18 question correctly? And the -- and the patient is our
19 biggest concern, making sure the patient's taken care of.
20 Q. So after you've -- If you've got an email and
21 if -- You talked about emails. You said voice mails too?
22 A. Yes.
23 Q. If you have a voice mail, what do you do with the
24 voice mail from a clinician that's made a complaint?
25 A. The same thing. I'll look into the chart. I'll

1 type up an email and I'll send it. Again, for me, it's
2 about making sure that I have as much of the picture in
3 front of me as possible, because it makes me look like I
4 don't know what I'm doing if I send something that's
5 half-cocked, for lack of a better term. I need to do as
6 much fact-finding as I can to make sure that what I send
7 is -- is the best painting of the picture that I can
8 provide. I don't always have all the answers. What I
9 like to do is make sure I have as much as possible so that
10 everything we're sharing back and forth is the best for
11 everybody involved.
12 Q. Okay. Aside from complaints, do you also provide
13 positive feedback --
14 A. Yes.
15 Q. -- to private ambulance companies when things go
16 well?
17 A. Yes, sir.
18 Q. And why -- why would you do that?
19 A. We need to celebrate the victories as much as we
20 need to talk about the bad things. I think the victories
21 kind of hold us up a little bit and kind of validate what
22 we're are there for. I think at the end of the day, what
23 we should all be concerned with is what's right for our
24 patients. If that's my daughter and wife, I want to make
25 sure they're getting the best care possible.

1 Q. Since 2006 -- You've been working at this role
2 at least since 2016, right?
3 A. Yes, sir.
4 Q. Okay. So who have -- The Dignity facilities
5 you're connected with -- and that's Chandler and Mercy --
6 who -- who have they primarily used for interfacility
7 transport services?
8 A. AMR.
9 Q. And do you know why that is?
10 A. Well, up until recently, they were the only game
11 in town.
12 Q. How would you describe your experience working
13 with AMR in that -- in your role as an EMS liaison in that
14 since 2016?
15 A. Peaks and valleys. It's got its ups and downs.
16 Q. Tell me a little bit more what that means.
17 A. So just like the -- the victories that we
18 celebrate, there have been some -- there have been some
19 challenges that come up along the way. I guess the
20 biggest thing for me is when I do have a concern -- If
21 somebody sends a concern to me, then my job is to look
22 into it from my end and make sure that I address it with
23 my leadership. The same thing I expect from the folks
24 that I work with is if I send a concern, I want that
25 feedback back to me that shows it's been addressed. It

1 doesn't mean -- it doesn't mean I need to know that
2 someone was counseled or got in trouble or, you know,
3 fired; that's not the intent. What I need to know is that
4 what we've talked about has been addressed and that
5 there's a solution in place so it doesn't happen again.
6 Q. What -- what sorts of transports are made from
7 Chandler Regional? Interfacility transports only?
8 A. Yes, sir.
9 Q. Are there ever -- is there ever a 911 call to
10 Chandler Regional Medical Center?
11 A. No, sir. That is inappropriate use of the 911
12 system. We're a higher level of care than any ambulance
13 or fire department can provide.
14 Q. And Mercy Gilbert is similar? Interfacility-only
15 transports?
16 A. Yes, sir.
17 Q. 911 ever called to Mercy Gilbert?
18 A. No, sir.
19 Q. If you know, what are the points of origin for
20 patients transferred into your facilities? Do you know?
21 A. Yeah, we get them from the urgent cares. We'll
22 get them from the freestanding EDs. We'll get them
23 transferred in from the San Carlos Indian reservation.
24 They come from basically all over the southeastern side of
25 the state. We've got them from as far as Havasu. We've

1 had some come in from California, Nevada. So once
2 Chandler Regional went to a Level 1, that kind of changed
3 our -- our game quite a bit, so we're receiving patients
4 now that we wouldn't have received five, six years ago.
5 Q. Now, you mentioned that one of the issues was --
6 one of your concerns with AMR in dealing with your
7 complaints -- can you -- can you identify some of the
8 issues that you've raised with them that you've had
9 problematic responses on?
10 A. Other than timeliness, I think the most important
11 ones are probably there were patient care issues. There
12 are a couple that come to mind. One was a CVA patient --
13 sorry, a stroke patient that we needed to send to Barrows
14 at St. Joe's. Somewhere along the line when that call was
15 made for that transfer, AMR determined that they were not
16 able to facilitate it. I don't remember the specifics
17 around that. They called 911. And Chandler Fire, of
18 course, they don't know -- all they know is the scene call
19 they get -- they get up on their CAD, and they show up at
20 the ER, and they come walking in and want to know why
21 they're at our hospital to pick up a patient in the OR.
22 We are, like, "We don't know."
23 MS. FICKBOHM: Can we get a date on this?
24 Foundation.
25 MR. MURPHY: Yeah.

1 THE WITNESS: I'm sorry.
2 MR. MURPHY: I've got some emails that I'm
3 going to be jumping into. And I see that it's 4:56, and I
4 don't know what folks want to do as a break-off point.
5 ALJ EIGENHEER: Now 4:57.
6 So before we do that, why don't we go ahead
7 and break. But did you -- I jumped ahead and put this
8 up.
9 MR. MURPHY: Thank you, Your Honor. I
10 jumped right in.
11 BY MR. MURPHY:
12 Q. Brandon, can you identify this document for me?
13 A. Yes, that is my resume.
14 MR. BELANGER: No objection.
15 ALJ EIGENHEER: Thanks.
16 MS. FICKBOHM: No objection here either.
17 MR. MURPHY: Thank you so much.
18 MS. FICKBOHM: Is that 128?
19 ALJ EIGENHEER: It is.
20 So CA-128 is admitted.
21 And why don't we call that a wrap for today.
22 MS. HOFMEYR: Judge, did we receive ABC-31?
23 ALJ EIGENHEER: Any objection to ABC-31?
24 MS. HOFMEYR: The RBR contract in Nevada.
25 MS. FICKBOHM: None here.

1 MR. MURPHY: We have no objection to it.
2 ALJ EIGENHEER: Okay. ABC-31 is admitted.
3 MS. HOFMEYR: Thank you.
4 ALJ EIGENHEER: And we will go off the
5 record at this time.
6 (The hearing was adjourned at 4:57 p.m.)
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1 STATE OF ARIZONA )
COUNTY OF MARICOPA )
2
BE IT KNOWN that the foregoing proceedings
3 were taken before me; that the foregoing pages are a full,
true, and accurate record of the proceedings all done to
4 the best of my skill and ability; that the proceedings
were taken down by me in shorthand and thereafter reduced
5 to print under my direction.

6 I CERTIFY that I am in no way related to
any of the parties hereto nor am I in any way interested
7 in the outcome hereof.

8 I CERTIFY that I have complied with the
ethical obligations set forth in ACJA 7-206(F)(3) and
9 ACJA 7-206 (J)(1)(g)(1) and (2). Dated at Phoenix,
Arizona, this 11th day of November, 2018.
10

11

12 Meri Coash

13 ________________________________
MERI COASH, RMR, CRR
14 Certified Reporter
Arizona CR No. 50327
15
I CERTIFY that Coash & Coash, Inc., has
16 complied with the ethical obligations set forth in
ACJA 7-206 (J)(1)(g)(1) through (6).
17

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23 [signature]

24 ________________________________
COASH & COASH, INC.
Registered Reporting Firm
25 Arizona RRF No. R1036