

1
2 Ronna L. Fickbohm
3 Arizona State Bar 010869
4 **FLETCHER STRUSE FICKBOHM & WAGNER PLC**
5 6750 N. Oracle Road
6 Tucson, Arizona 85704
7 Telephone: (520) 575-5555
8 rfickbohm@tucsontrusts.com
9 Attorneys for AMR CON holders

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11
12
13
14
15
16
17
18
19
20
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BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

**RBR Management LLC, dba
Community Ambulance**

Applicant.

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

**MOTION FOR INTERVENING PARTY
STATUS (MULTIPLE AMR CON
HOLDERS), AND FOR PREHEARING
CONFERENCE / PREHEARING ORDER
/ PERMISSION TO APPEAR
TELEPHONICALLY AT PREHEARING
CONFERENCE**

Pursuant to A.R.S. §36-2234 (providing for the hearing in this matter), Arizona Administrative Code §§R2-19-102(C), R2-19-106 and R2-19-112(A), and Ariz.R.Civ.Pro. Rule 24, the below identified subsidiaries of AMR HoldCo, Inc. hereby move for entry of an order allowing each intervening party status in this matter. All have an interest in this proceeding and do intend to oppose the Applicant's request for issuance of a CON.

These moving parties also submit that a Prehearing Conference should be scheduled in this matter and request that this Office issue its order setting that Prehearing Conference, outlining in its order what issues will be discussed [R2-19-112(A)]. They likewise request that undersigned counsel be given permission to appear telephonically at that Prehearing Conference. *Id.*

1 This motion is supported by the following Memorandum of Points and Authorities
2 and all matters of record herein.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 Pursuant to the Notice of Hearing recently issued in this matter (dated June 1,
5 2017), the Applicant has requested issuance of an initial Certificate of Necessity (“CON”)
6 to operate an ambulance service within the entire geographic boundaries of Maricopa
7 County. See, Notice of Hearing, pp. 1 and 3. The Applicant is ONLY proposing to provide
8 scheduled interfacility and convalescent transports. *Id.*, p. 1. The Department of Health
9 Services has already determined that the proposed service area overlaps the CON service
10 areas for the following AMR HoldCo, Inc. (“AMR”) subsidiaries (hereafter referred to
11 collectively as “AMR CON holders” or “AMR entities”):

12 American Medical Response of Maricopa, LLC (CON 136)
13 Canyon State Ambulance (CON 58)
14 Southwest Ambulance and Rescue of Arizona (CON 66)
15 Life Line Ambulance Service (CON 62)
16 Southwest Ambulance Maricopa (CON 86)
Rural/Metro Corp - Maricopa (CON 109)
ComTrans Ambulance Service, Inc. (CON 46)
Professional Medical Transport, Inc. (CON 71)
American Ambulance (CON 75)

17 *Id.*, p. 3.¹

18 Among the issues to be considered at hearing is that of whether public necessity
19 requires the Applicant’s proposed service, or any part of it, which issue necessarily
20 includes the impact of a successful application on the financial and operational ability of
21 an existing CON holder to continue to serve residents living in rural and wilderness areas
22 adjacent to the CON service area requested, as well as what Applicant’s plan is to ensure
23 continued ambulance service to such rural and wilderness areas should the current CON
24 holders be unable to continue their services. *Id.*, p. 2.

25
26 1 While ABC Ambulance, LLC (CON 144) appears to be listed within the itemization of
27 the AMR CON holders, it is not an AMR subsidiary.

1 Further, these existing CON holders are uniquely situated to provide information
2 relevant to the overall hearing, including but not limited to the public necessity factors and
3 the appropriateness of the Applicant's proposed service area. It is too early in these
4 proceedings to state precisely what issues the AMR CON holders will elect to offer
5 evidence in connection with, but at a minimum they do intend to demonstrate that public
6 necessity does not support this Application and that it is not in the public's best interest for
7 it to be granted.

8 While no statute or administrative rule states a standard for intervention, R2-19-
9 102(C) states that in the absence of such statute or administrative rule, an administrative
10 law judge may issue an order using the Arizona Rules of Civil Procedure for guidance. In
11 this regard, the Arizona Rules of Civil Procedure, at Rule 24, recognize intervention both
12 as a matter of right and by way of court permission. Intervention as a matter of right is
13 required when the moving party "claims an interest relating to the property or transaction
14 which is the subject of the action and the [moving party] is so situated that the disposition
15 of the action may as a practical matter impair or impede the [moving party's] ability to
16 protect that interest, unless [the moving party's] interest is adequately represented by
17 existing parties." *Id.*, Rule 24(a).

18 Here, the AMR CON holders are entitled to intervene as a matter of right. The
19 overlap of Applicant's proposed service area with the AMR entities' various CON service
20 areas supports this. The services Applicant proposes to provide are already being
21 provided by one or more of the AMR entities, in various places throughout the county.
22 While these entities are not proposing they have any sort of a property right by virtue of
23 their CONs (which will be contrary to A.R.S. §36-2236), the "interest" required under Rule
24 24(a)(2) is not limited to property rights. Rather, these entities obviously have a legal
25 interest in the ambulance transports existing within their current service area, as
26 demonstrated by the fact that the "public necessity" factor that A.R.S. §36-2233(B)(2)

1 requires be established prior to issuance of an initial CON includes the question of whether
2 issuing a CON to more than one ambulance service provider within the same service area
3 is in the public's best interest, based upon a number of factors including the existence of
4 current ground ambulance service to the subject area. R9-25-903(A).

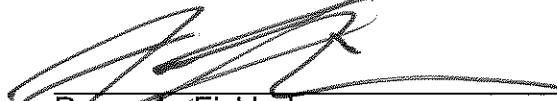
5 No other party appearing in this matter will be able to protect these entities' interests
6 in the critical issues underlying the public necessity determination. As existing CON
7 holders that are already providing the precise type and level of ambulance transport
8 services to the service area Applicant now asks that it be authorized to provide, these
9 entities interests in their existing CONs would be affected by the addition of an overlapping
10 CON holder. As such, ADHS/BEMSTS has historically taken the position that if the
11 proposed service area of an application for an initial CON overlaps the current service area
12 of an existing CON holder, that existing CON holder has the right to intervene. Similarly,
13 ADHS/BEMSTS has historically not acted to represent any existing CON holder's interests
14 in a hearing such as this one. Finally, these AMR CON holders are in a unique position
15 to gather and provide information for this Office's consideration, and for the Director's
16 consideration, regarding the negative impact of granting the subject Application.

17 For all of the above stated reasons, it is respectfully requested that this Office enter
18 an order (1) ruling that the above itemized AMR CON holders are entitled to intervening
19 party status; (2) authorizing the webmaster to treat these entities as interested parties
20 herein (allowing them access to OAH's electronic database for filing and automatic receipt
21 of notice of items filed by other parties); and (3) setting a Prehearing Conference so that
22 case management deadlines may be discussed and established. In this last regard, it is
23 requested that undersigned counsel be allowed by appear telephonically at that Prehearing
24 Conference in order to avoid the AMR entities incurring the expense associated with the

1 undersigned traveling from Tucson to Phoenix for the Prehearing Conference, and to
2 possibly avoid requests to reschedule in the event the undersigned has other matters
3 scheduled in Tucson on the same day selected for the Prehearing Conference.

4 RESPECTFULLY SUBMITTED THIS 14 day of June, 2017.

5 **FLETCHER STRUSE FICKBOHM & WAGNER PLC**

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7 Ronna L. Fickbohm
8 Attorneys for AMR CON holders

9 Copy hereof filed through the
10 OAH Website <http://www.azoah.com/motions.html>
11 this 14 day of June, 2017.

12 Original delivered via US Mail
13 this 14 day of June, 2017 to:

14 Office of Administrative Hearings
15 1400 W. Washington, #101
16 Phoenix, AZ 85007

17 Delivered via email only this
18 14 day of June, 2017 to:

19 Kevin Ray
20 Patricia LaMagna
21 Molly Bonsall
22 Assistant Attorney Generals
23 Office of the Attorney General
24 1275 W. Washington
25 Phoenix, AZ 85007
26 *Attorneys for Arizona Department of Health Services/BEMSTS*

27 Copy hereof delivered via U.S. mail
28 this 14 day of June, 2017 to:

Tammy Eigenheer
Administrative Law Judge
Office of Administrative Hearings
1400 W. Washington, #101
Phoenix, AZ 85007

1 Clerk of the Department
Arizona Department of Health Services
2 150 N. 18th Ave., Room 200
Phoenix, AZ 85007
3
4 Rob Richardson, CEO
RBR Management, LLC dba
Community Ambulance
5 3030 N. Central, #501
Phoenix, AZ 85012
6
7 Don Herrington
Assistant Director
ADHS/Public Health Services
8 150 N. 18th Ave., #505
Phoenix, AZ 85007
9
10 Aaron Sams, MBA
Certificate of Necessity & Ambulance Rates Manager
ADHS/Bureau of Emergency Medical Services & Trauma System
11 150 N. 18th Ave., #540
Phoenix, AZ 85007-3248
12
13 Debbie Johnson
Director, Vice President, Advocacy
Arizona Hospital and Healthcare Association
14 2800 N. Central Ave., #1450
Phoenix, AZ 85004-1051
15
16 Victoria Burns
AHCCCS, MD 6600
P.O. Box 25520
17 Phoenix, AZ 85002
18 Nancy Bonnell, Unit Chief
Antitrust Unit
19 Office of the Attorney General
1275 W. Washington
20 Phoenix, AZ 85007
21 Alana C. Brunacini, DBH
Director of Administration
22 ABC Ambulance, LLC
2336 E. Magnolia St.
23 Phoenix, AZ 85034
24 Lonnie Guthrie
Service Director
25 Ajo Ambulance, Inc.
1850 N. Ajo-Gila Bend Hwy.
26 Ajo, AZ 85321

27
28

- 1 Mark Nichols, Fire Chief
Black Canyon Fire District dba
- 2 Black Canyon Fire Department
P.O. Box 967
- 3 Black Canyon City, AZ 85324-0967

- 4 Mike Duran, Fire Chief
Buckeye Valley Rural Volunteer Fire District dba
- 5 Buckeye Valley Volunteer Rescue Unit
P.O. Box 75
- 6 Buckeye, AZ 85326

- 7 Mark Nichols, Fire Chief
Daisy Mountain Fire District
- 8 515 E. Carefree Highway
PMB 385
- 9 Phoenix, AZ 85085

- 10 Fred Baldrige, Fire Chief
Town of Gila Bend dba
- 11 Gila Bend Rescue/Ambulance
P.O. Box A
- 12 Gila Bend, AZ 85337

- 13 Jim Jobusch, Fire Chief
Town of Gilbert dba
- 14 Gilbert Fire and Rescue Department
85 E. Civic Center Dr.
- 15 Gilbert, AZ 85296

- 16 Bryan Gibson
Maricopa Ambulance, LLC dba
- 17 Maricopa Ambulance
10243 N. 19th Ave.
- 18 Phoenix, AZ 85025

- 19 Mary Cameli, Fire Chief
City of Mesa dba
- 20 Mesa Fire & Medical Department
13 W. 1st Street
- 21 Mesa, AZ 85201

- 22 Robert Biscoe, Fire Chief
North Country Fire & Medical District
- 23 18818 N. Spanish Garden Drive
Sun City West, AZ 85375

- 24 Jim Bratcher, EMS Chief
City of Peoria dba
- 25 Peoria Fire and Medical Department
8401 W. Monroe Ave.
- 26 Peoria, AZ 85345

- 1 Pamela Wayne
Ambulance Billing Supervisor
2 City of Phoenix dba
City of Phoenix ETS (Emergency Transport System)
3 150 S. 12th Street
Phoenix, AZ 85034
4
- 5 Ron Knight, Fire Chief
Town of Queen Creek dba
Queen Creek Fire and Medical Department
6 22358 S. Ellsworth Rd.
Queen Creek, AZ 85142
7
- 8 Jay Ducote, Fire Chief
Rio Verde Fire District
25608 N. Forest Rd.
9 Rio Verde, AZ 85263
- 10 Michael Thompson, Fire Chief
Sun City Fire District dba
11 Sun City Fire and Medical Department
18602 N. 99th Ave.
12 Sun City, AZ 85373
- 13 Troy Maloney, Fire Chief
Sun Lakes Fire District
14 25020 S. Alma School Road
Sun Lakes, AZ 85248
15
- 16 Paul Bourgeois, Fire Chief
Superstition Fire & Medical District
565 N. Idaho
17 Apache Junction, AZ 85119
- 18 Thomas Abbott, Fire Chief
Surprise Fire-Medical District
19 14250 W. Statler Plaza, #101
Surprise, AZ 85374
20
- 21 Greg Ruiz, Fire Chief
City of Tempe dba
Tempe Fire Medical Rescue
22 P.O. Box 5002
Tempe, AZ 85280
23
- 24 Steve Holt, Fire Chief
Tonto Basin Fire District
P.O. Box 48
25 Tonto Basin, AZ 85553

26
27
28

1 Richard Nix, EMS Chief
2 Tri-Valley Ambulance Service, Inc.
3 P.O. Box 958
4 29118 E. Los Angeles
5 Wellton, AZ 85356-0958

6 BY:



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8
9
10
11
12
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14
15
16
17
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19
20
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