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

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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 ORDER ALLOWING
REPLY IN SUPPORT OF THE AMR
CON HOLDERS' MOTION FOR
INTERVENING PARTY STATUS . . .
AND ALLOWING ORAL ARGUMENT
ON THE MOTION**

The AMR CON holders (as specifically identified on p. 2 of their June 14, 2017 Motion for Intervening Party Status) hereby move, pursuant to AAC R2-19-106(A) (motions), (D)(providing for responses to motions but not providing for replies) and (E)(setting forth the parameters for requesting oral arguments); R2-19-102(C)(allowing reference to the Arizona Rules of Civil Procedure when an administrative regulation is not on point); and Ariz.R.Civ.Pro. Rule 7.1(a)(requiring both motions and responsive submissions to be appropriately supported), for this Office's order allowing the AMR CON holders to submit a reply in support of their Motion for Intervening Party Status.¹ A reply is required because (1) the Applicant's response is based upon issues separate and apart

¹ In the event this Office grants the AMR CON holders' contemporaneously submitted "Motion to Strike Applicant's Response . . .," for its failure to comply with R2-19-106(D)(no response was submitted to this Office within the time allowed), this motion will become moot.

1 from those briefed in the Motion for Intervening Party Status, (2) the positions taken by
2 Applicant in its response are not well grounded in law or fact, and (3) justice therefore
3 requires that the AMR CON holders have the opportunity to submit a supportive reply or
4 otherwise brief what has been raised by Applicant in its response.

5 This motion is supported by the following Memorandum of Points and Authorities,
6 as well as all matters of record herein.

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8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 AAC R2-19-106(D)(addressing motions), allows responses to motions (if timely
10 made), but does not provide for the moving party to submit a supportive reply. Because
11 responses are specifically allowed, and replies are not, it must be assumed a party may
12 only submit a supportive reply if specifically allowed by the assigned Administrative Law
13 Judge.

14 Also, pursuant to AAC R2-19-106(E), a party is able to request an oral argument
15 when it files its motion or its response. That subsection also provides that an
16 Administrative Law Judge may granted oral argument if necessary to develop a complete
17 record in the matter. Here, the AMR CON holders did not request oral argument when they
18 filed their motion, and the Applicant did not request oral argument when filing its response.
19 The AMR CON holders believed their right to intervene in this matter was clearly defined,
20 and, frankly, anticipated no objection. As such, oral argument was not requested when
21 they filed their motion seeking intervening party status. Now, if this Office allows the
22 Applicant's response to stand despite its failure to comply with R2-19-106(D)'s time
23 requirement (which the AMR CON holders have addressed by way of a separate motion),
24 and despite the absence of fact and law citation support required by Ariz.R.Civ. Pro. Rule
25 7.1(a), the Applicant will have raised a myriad of legal and factual issues that - if this Office
26 believes it even has jurisdiction to entertain what is really nothing more than one legal

1 entity looking to enforce another, separate, legal entity's supposed contract rights - must
2 be addressed in order to develop a complete record in this regard. For example (being
3 mindful of the fact that this motion will not be considered the AMR Con holders' supportive
4 reply, they do not intend this list to be exhaustive), at a minimum the following issues are
5 implicated and the AMR CON holders request the opportunity to brief these and any other
6 relevant matters:

7 1. While Applicant RBR Management LLC dba Community Ambulance's
8 response avers that Dignity Health is its majority owner, Applicant is plainly an independent
9 legal entity and nothing in its response demonstrates that the Applicant has standing to rely
10 upon or seek to enforce a contract it is not a party to.

11 2. Similarly, the Applicant, as a separate and distinct (from Dignity Health)
12 entity, cannot equate itself with Dignity Health for purposes of its response.

13 3. The Applicant's interpretation of the contract between the AMR CON holders
14 and Dignity Health is contrary to both a reasonable interpretation of the offered contract
15 provision (which would essentially impose a prohibition on the AMR CON holders
16 intervening in any Maricopa County CON application proceeding - regardless of who the
17 applicant is - if that CON service area overlapped any Dignity facility) and is contrary to
18 both the AMR CON holders' understanding of the Dignity contract and their reasonable
19 expectations of their rights and obligations under the contract.

20 4. The Applicant makes a "waiver" (apparently of the AMR CON holders' right
21 to intervene in any Maricopa County CON proceeding) argument, yet does not allege law
22 or facts supporting a knowing waiver by the AMR CON holders.

23 5. To the extent the Applicant argues that the proposed CON will have little to
24 no impact upon certain AMR CON holders because there are no Dignity facilities in their
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1 overlapped areas, it must be observed that the Applicant has not applied for a CON to
2 simply serve Dignity facilities; the Applicant has applied to serve all of Maricopa County
3 (see, Notice of Hearing, pp. 1-2).

4 6. The instant proceeding does not involve Dignity Health negotiating or entering
5 into a service agreement with a certificated ambulance transport company; it also does not
6 involve Dignity Health trying to develop its own capability or authority to provide ambulance
7 transport services to its patients. Dignity Health is not the Applicant here. As such, the
8 contract provision Applicant relies upon in its response is inapplicable.

9 7. A CON application, and the regulatory process required for that application,
10 cannot be construed, under any reasonable interpretation, as Dignity Health negotiating
11 with a third party in order to enter into an agreement for ambulance transport services.

12 8. If when Dignity Health entered into the contract terms (with the AMR CON
13 holders) that Applicant now relies upon, Dignity in fact intended to use the subject clause
14 in the manner it is currently advocating (as the majority interest holder in Applicant), the
15 subject contract will be voidable based upon fraud in the inducement; the AMR CON
16 holders would not have agreed to such a broadly construed scope of Section 18 and
17 Dignity Health concealing this intended use would have (if that is the circumstance)
18 involved concealment of a material fact.

19 9. The Dignity Health contract may be terminable based upon this current
20 activity; at a minimum, Dignity Health's apparent violation of the implied duty of good faith
21 and fair dealing found in all Arizona contracts would constitute a material breach that would
22 prevent it from relying upon contractual provisions it wants to enforce or would allow the
23 AMR CON holders to immediately terminate the subject contract due to Dignity Health's
24 material breach.

1 All of these issues merit briefing and further discussion at oral argument. Therefore,
2 in the event the Applicant's response is not stricken as untimely, the AMR CON holders
3 hereby request permission to file a supportive reply, and request oral argument on their
4 motion.²

5 RESPECTFULLY SUBMITTED THIS 28 day of June, 2017.

6 **FLETCHER STRUSE FICKBOHM & WAGNER PLC**

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9 Ronna L. Fickbohm
Attorneys for AMR CON holders

10 Pursuant to Case Management
11 Order 1, electronic filing and
12 service of the foregoing through
13 <https://portal.azoah.com/oedf/>,
has been done this 28 day of
June, 2017

14 Courtesy copies delivered via email
15 only this 28 day of June, 2017 to:

16 Kevin Ray
17 Patricia LaMagna
18 Molly Bonsall
Assistant Attorney Generals
19 Office of the Attorney General
1275 W. Washington
Phoenix, AZ 85007
Attorneys for Arizona Department of Health Services/BEMSTS

20 Jeffrey Meyerson
21 The Meyerson Law Firm, PLC
22 2555 East Camelback Road, Suite 140
Phoenix, Arizona 85016
Attorney for Applicant Community Ambulance

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26 ² In this regard, the undersigned must advise this Office and counsel for the parties that she
27 will be unavailable July 13 - 23 due to a parental caretaking visit that cannot be rescheduled.

1 James J. Belanger
2 J. BELANGER LAW PLLC
3 PO Box 447
4 Tempe, Arizona 85280
5 *Attorneys for Maricopa Ambulance*

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