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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

RBR Management LLC, dba Community
Ambulance,

Applicant

Case No.: 2017-EMS-0104-DHS

**ADHS/BEMSTS' RESPONSE TO
MOTION TO INTERVENE BY
DIGNITY HEALTH**

(Assigned to the Hon. Tammy Eigenheer)

The Arizona Department of Health Services (“ADHS” or “Department”), Bureau of Emergency Medical Services and Trauma System (“the Bureau” or “BEMSTS”), hereby responds to the Motion to Intervene by Dignity Health. The Bureau believes that both the Administrative Law Judge (“ALJ”) and the Department have authority to interpret the contested contract provision as it relates to the issue of intervention in this proceeding, and that Dignity Health does not need to intervene in order for its interests to be adequately represented. Alternatively, if Dignity Health is permitted to intervene, that it be for the specific and limited purpose of providing information regarding the contested contract provision. Additionally, the Bureau requests that Dignity Health’s intervention status be ruled on before the ALJ sets significant pre-hearing deadlines

1 and/or hearing dates in order to avoid any interruptions in the hearing process for this
2 application.

3 **I. The ALJ and the Department have Authority to Interpret the Contract.**

4 The Bureau respectfully disagrees with both Dignity Health and AMR that the
5 ALJ and the Department have no authority or jurisdiction to interpret the non-
6 interference provision of the ambulance contract between AMR and Dignity. (*See*
7 Dignity Health’s Motion to Intervene [“Dignity Motion”] at 6:23-7:17; and AMR’s
8 Response to Dignity’s Motion to Intervene [“AMR Motion”] at 1:17-18.) As all parties
9 concede, the ALJ has the authority to determine when intervention is appropriate
10 according to Rule 24 of the Arizona Rules of Civil Procedure. To that end, the ALJ will
11 consider the filings on that issue and take evidence, as needed, which may bear on her
12 determination. Dignity’s and AMR’s position is inconsistent with that authority. They
13 cannot take the position that the ALJ has jurisdiction to consider a Motion to Intervene,
14 but simultaneously argue that evidence directly related to a party’s right to intervene is
15 outside the scope of the ALJ’s authority. Consideration of the contested contract
16 provision as it relates to AMR’s right to intervene is necessary if the ALJ is to make a
17 reasoned decision.

18 Additionally, the Dignity Motion incorrectly asserts that the Department has no
19 statutory authority to interpret contracts. (*See* Dignity Motion at 5:12-15.) A.R.S. § 36-
20 2232(A)(1) and A.A.C. R9-25-1104 specifically *authorize* the Department to review
21 and approve or deny ambulance service contracts like the contract at issue. Indeed,
22 AMR was required to submit *this* contract for review and the Bureau approved it
23 pursuant to its authority to do so on behalf of the Department. If ADHS were not
24 authorized to interpret ambulance contracts, the authority given it to review contracts for
25 compliance with ground ambulance regulation would be meaningless. *See* A.A.C. R9-
26 25-1104(A)(3) (“Before implementing a ground ambulance service contract, a certificate
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1 holder shall submit to the Department for approval a copy of the contract... The contract
2 shall... [c]omply with A.R.S. §§ 36-2201 through 36-2246 and 9 A.A.C 25.”)

3 Furthermore, Dignity’s reliance on *Tornabene v. Bonine ex rel. Ariz Highway*
4 *Dep’t*, 203 Ariz. 326 (App. 2002) is misplaced. In *Tornabene*, the court held that the
5 constitutionality of the investigatory stop leading to a DUI arrest was not within the
6 scope of the administrative hearing as governed by A.R.S. § 28-1321(G) and (K). *Id.* at
7 333, ¶17. In this matter, unlike *Tornabene*, there is no threshold, constitutional claim
8 that must be resolved before the administrative hearing can proceed. Rather, title 41,
9 chapter 6, article 10 gives the ALJ the authority to consider those issues “properly
10 noticed” by the agency. A.R.S. § 41-1092.07 (D) and (F)(7). And the issue properly
11 noticed by ADHS in this matter, whether to grant the proposed CON to Applicant, is the
12 authority that will allow the ALJ to collect and consider evidence on that issue,
13 including evidence whether other CON holders may be affected by the proposed CON.
14 In this matter, Applicant’s proposed CON overlaps AMR’s CONs, therefore ADHS’
15 Director *must* consider the potential impact, financial and otherwise, on AMR when
16 considering “public necessity.” *See* A.A.C. R9-25-903(A) and (B). Their requested
17 intervention seeks to provide such evidence.

18 **II. Intervention is Unnecessary Because the Applicant Can Adequately**
19 **Represent Dignity Health’s Interests**

20 Rule 24(a)(2) of the Arizona Rules of Civil Procedure states that a court must
21 allow intervention when a person or entity “claims an interest relating to the subject of
22 an action, and is so situated that disposing of the action in the person’s absence may as a
23 practical matter impair or impede the person’s ability to protect that interest, unless
24 existing parties adequately represent that interest.” Dignity Health is alleged to be a
25 majority owner of RBR Management, LLC. (*See* RBR Management’s Response to
26 Motion for Intervening Party Status [“RBR Motion”] at 2:7-12.) In fact, the Applicant
27 makes statements on behalf of Dignity Health in the RBR Motion opposing AMR’s
28 intervention. (*See, i.e.* RBR Motion at 2:15-21; 3:12-28; 4:19-22; 5:6-8.) There is

1 clearly a strong nexus (a claimed joint venture) between these parties, and Applicant's
2 interests are implicated in the interpretation of this contract by virtue of that relationship.
3 The Bureau believes the Applicant can adequately represent Dignity Health's interests
4 by calling witnesses with appropriate knowledge and understanding of the contract to
5 provide evidence of the contracting parties' intent. Dignity Health itself does not need
6 to intervene if its witnesses or the Applicant's witnesses can provide the necessary
7 evidence regarding this contract. In the alternative, if Dignity Health is allowed to
8 intervene, the intervention should be for the limited purpose of providing information
9 about the contested contract provision.

10 **III. Conclusion**

11 As noted here, the Department and OAH have the authority to hear evidence of
12 the contested contract provision as it relates to AMR's right to intervene, and cannot
13 make a competent decision regarding AMR's intervention without doing so. That
14 evidence likely can be elicited through the Applicant, making Dignity Health's
15 intervention unnecessary. However, if Dignity Health is allowed to intervene, the
16 Bureau requests that it be specifically limited to providing information about the
17 contested contract provision. Finally, the Bureau believes that the ALJ should resolve
18 AMR's status as an intervening party before setting any significant prehearing deadlines
19 and/or hearing dates.

20 DATED this 21st day of July, 2017.

21 MARK BRNOVICH
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1 **CERTIFICATE OF SERVICE**

2 **ORIGINAL** filed using the OAH electronic document filing system
3 <https://portal.azoah.com/oedf> this 21st day of July, 2017, with copies provided to all
4 parties on the approved mailing list this 21st day of July, 2017, by posting through the
5 designated OAH website at [https://portal.azoah.com/oedf/documents/2017-EMS-0104-](https://portal.azoah.com/oedf/documents/2017-EMS-0104-DHS/index.html)
6 [DHS/index.html](https://portal.azoah.com/oedf/documents/2017-EMS-0104-DHS/index.html).

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