

1 Brendan Murphy, State Bar No. 021947  
2 HENDRICKS MURPHY, PLLC  
3 3101 North Central Avenue, Suite 970  
4 Phoenix, Arizona 85012  
5 (602) 604-2104  
6 [Brendan@hendricksmurphy.com](mailto:Brendan@hendricksmurphy.com)

7 Jeffrey Meyerson, State Bar No. 022600  
8 THE MEYERSON LAW FIRM  
9 2555 East Camelback Road  
10 Suite 140  
11 Phoenix, Arizona 85016  
12 [jeff@themeyersonfirm.com](mailto:jeff@themeyersonfirm.com)

13 Attorneys for Applicant

14 **IN THE OFFICE OF ADMINSTRATIVE HEARINGS**

15 In the Matter of:

16 RBR Management LLC dba Community  
17 Ambulance

18 Applicant.

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

**APPLICANT'S REPSONSE TO  
DIGNITY HEALTH'S MOTION  
TO INTERVENE**

**(Assigned to the Honorable  
Tammy L. Eigenheer)**

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22 RBR Management LLC, dba Community Ambulance ("Applicant") hereby  
23 responds in support of Dignity Health's Motion to Intervene. Through its  
24 Motion, Dignity Health seeks to intervene for the limited purpose of addressing  
25 issues related to its November 9, 2015 Customer Agreement with AMR,  
26 amended effective February 21, 2017 ("Customer Agreement").<sup>1</sup> For the  
27 following reasons, Applicant requests that the ALJ (1) permit Dignity Health to  
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<sup>1</sup> See Exhibit A to Applicant's Response to Motion For Intervening Party Status.

1 intervene in this proceeding; (2) decline to interpret the Customer Agreement;  
2 and (3) refrain from ruling on AMR's request to intervene until after Dignity  
3 Health and AMR resolve the disputed contractual issue in Maricopa County  
4 Superior Court.

5 **1. Dignity Health has a protectable interest requiring its limited**  
6 **intervention.**

7 The threshold issue for the ALJ to consider on Dignity Health's Motion is  
8 whether Dignity Health has a protectable interest in the issues related to the  
9 terms of its DHS-approved Customer Agreement with AMR. Without the ability  
10 to intervene in this matter, Dignity Health would be unable to protect its  
11 interests in enforcing the Customer Agreement – including enforcing the  
12 material term through which AMR agreed that it “shall not initiate legal action  
13 or take any other action to challenge the right of [Dignity Health] to enter into  
14 a services agreement with another organization, or to develop its own capability  
15 or authority to provide services to its patients.” See Customer Agreement, ¶18.  
16 AMR's motion to intervene is a breach of this provision, and prohibiting Dignity  
17 Health from being heard on these issues – particularly if the ALJ determines it  
18 has the authority to interpret the Customer Agreement as a matter of law – will  
19 undeniably impair and impede Dignity Health's ability to protect its contractual  
20 interests in an active dispute. See Ariz. R. Civ. P. 24.

21 Nor is Applicant best positioned to represent Dignity Health's interests in  
22 this regard now that Dignity Health has asked to intervene with respect to its  
23 contract with AMR. Although Applicant is a third-party beneficiary of the  
24 Customer Agreement whose interests are aligned with Dignity Health and  
25 impacted directly by AMR's breach of the Customer Agreement, Applicant and  
26 Dignity Health are very much distinct and separate legal entities. Dignity  
27 Health – not Applicant – is the named party to the Customer Agreement.  
28 Dignity Health – not Applicant – negotiated and executed the 2015 Customer

1 Agreement with AMR. And, Dignity Health – not Applicant – negotiated the  
2 2017 Amendment to the Customer Agreement. While there is no question  
3 Applicant is an entity through which Dignity Health seeks “to develop its own  
4 capability or authority to provide services to its patients,” Applicant is a distinct  
5 legal entity from Dignity Health and is not an adequate substitute to represent  
6 Dignity Health’s independent contractual interests. Not to mention that AMR,  
7 the only other party to the Customer Agreement, has argued that Applicant is  
8 not the proper party to make objections based on its agreement with Dignity  
9 Health. Based on this argument alone, AMR all but confirms that Dignity  
10 Health’s effort to intervene is not only appropriate but necessary.

11 AMR’s attempt to intervene in this proceeding interferes with Dignity  
12 Health’s rights and expected benefits under the terms of the Customer  
13 Agreement. To the extent issues regarding AMR’s ability to intervene are  
14 pending, those issues directly affect Dignity Health’s contractual rights and  
15 interests. As such, the ALJ should grant Dignity Health’s Motion to Intervene,  
16 allowing the intervention for the limited purpose of addressing those contractual  
17 issues.

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19 **2. Maricopa County Superior Court has subject matter jurisdiction**  
20 **over the contractual dispute between Dignity Health and AMR.**

21 Applicant respectfully submits that while ADHS is empowered to review  
22 and approve contracts for compliance under A.A.C. R9-25-1104, it does not  
23 appear that either the agency or the ALJ have statutory or regulatory authority  
24 to interpret the Customer Agreement as a matter of law. On this point, even  
25 AMR agrees that the ALJ and ADHS lack the authority to interpret the non-  
interference provision of the contract.

26 The authority to determine compliance, however, does not equate to an  
27 affirmative grant of authority to interpret the terms of a contract. *See* A.A.C.  
28 R9-25-1104 (requiring CON holders to submit ambulance service contracts to

1 ADHS for approval, and setting out the requirements for those contracts –  
2 primarily that they must “[c]omply with A.R.S. §§ 36-2201 through 36-2246 and  
3 9 A.A.C 25”).

4 Nowhere in the enabling statutes or regulations does the legislature  
5 expressly confer on either ADHS or the ALJ the power to interpret, in the course  
6 of a CON application proceeding, a negotiated commercial term in an arm’s  
7 length agreement between parties. *See Arizona State Bd. of Regents ex rel.*  
8 *Arizona State Univ. v. Arizona State Pers. Bd.*, 195 Ariz. 173, 175, 985 P.2d 1032,  
9 1034 (1999) (“Administrative agencies have no common law or inherent  
10 powers—their powers are limited by their enabling legislation.”). Without any  
11 such express authorization, the judicial power to determine the rights and  
12 obligations of parties to a contract is reserved to the superior court, which has  
13 original jurisdiction of all “cases and proceedings in which exclusive jurisdiction  
14 is not vested by law in another court.” Ariz. Const. art. VI, § 14; A.R.S. § 12-1831  
15 (“Courts of record within their respective jurisdictions shall have power to  
16 declare rights, status, and other legal relations whether or not further relief is  
17 or could be claimed.”); Ariz. R. Civ. P. 57.

18 Because the scope of the ALJ’s jurisdiction and authority appears  
19 restricted to factual findings concerning whether the factors for the issuance of  
20 a CON have been established, it should neither consider evidence regarding the  
21 terms of the Customer Agreement, or interpret as a matter of law those terms.  
22 *See Sunrise Desert Vistas Prop. Owners Ass’n, Inc. v. Sallus*, No. 1 CA-CV 14-  
23 0452, 2016 WL 3176451, at \*2 (App. 2016), as amended (June 21, 2016)  
24 (“Administrative decisions that reach beyond an agency’s statutory power are  
25 void”), citing *Ariz. Bd. of Regents for & on Behalf of Univ. of Ariz. v. State ex rel.*  
26 *State of Ariz. Pub. Safety Ret. Fund Manager Adm’r*, 160 Ariz. 150, 156 (App.  
27 1989).

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**3. Conclusion**

In accordance with the foregoing, Applicant respectfully requests the Administrative Law Judge (“ALJ”) (1) grant Dignity Health’s Motion to Intervene; (2) decline to address the issues of contract interpretation existing between AMR and Dignity Health; and (3) refrain from ruling on AMR’s request to intervene until after Dignity Health and AMR resolve the disputed contractual issue in Maricopa County Superior Court.

Respectfully submitted this 24th day of July, 2017

**HENDRICKS MURPHY, PLLC**

By /s/ Brendan Murphy  
Brendan Murphy  
3101 N. Central Ave., Suite 970  
Phoenix, Arizona 85012  
Attorney for Applicant

**THE MEYERSON LAW FIRM**

Jeffrey Meyerson  
2555 East Camelback Road  
Suite 140  
Phoenix, Arizona 85016

**ORIGINAL** filed this 24th day of July, 2017 via the OAH electronic document filing system <https://portal.azoah.com/oedf>, with copies provided to all parties on the approved mailing list by posting through the designated OAH website at <https://portal.azoah.com/oedf/documents/2017-EMS-0104-DHS/index.html>, in accordance with Case Management Order No. 1.

By: /s/ Brendan Murphy