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16 **IN THE OFFICE OF ADMINSTRATIVE HEARINGS**

17 In the Matter of:

18 RBR Management LLC dba Community
19 Ambulance,

20 Applicant.

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

**APPLICANT'S
MOTION TO STAY**

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

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23 Pursuant to R2-19-106, Applicant RBR Management LLC, dba
24 Community Ambulance (“Applicant” or “RBR”) hereby moves the Administrative
25 Law Judge (“ALJ”) to exercise her broad discretion and stay this CON application
26 proceeding pending the outcome of Dignity Health’s expedited declaratory
27 judgment action and request for preliminary injunction, currently before the
28 Honorable Daniel Martin (“Judge Martin”) in Maricopa County Superior Court

1 (“MCSC”).¹ Good cause supports Applicant’s request. Indeed, granting a stay² of
2 these proceedings will conserve party, judicial, and administrative resources and
3 avoid any risk of potentially inconsistent outcomes on the interpretation of the
4 threshold contract interpretation issues. Further, because the only party who
5 could conceivably be prejudiced by a delay in this CON application proceeding is
6 Applicant, there is no undue prejudice to the current intervenors (Maricopa
7 Ambulance, LLC and ABC Ambulance, LLC), the Arizona Department of Health
8 Services (“ADHS”), or AMR Holdco Inc. and its subsidiaries (“AMR”) should stay
9 relief be granted. For these reasons, and the reasons discussed below, Applicant
10 respectfully requests the ALJ grant Applicant’s motion and issue a stay of the
11 CON application proceedings pending the outcome of the expedited declaratory
12 judgment claim and request for preliminary injunction now pending in the MCSC
13 Litigation.

14 **1. Procedural Factual Background.**

15 On June 10, 2016, RBR filed its application with ADHS for a CON to
16 provide interfacility and convalescent ground ambulance transports to serve
17 Dignity Health facilities in Maricopa County (“Application”) – the ambulance
18 services AMR provided Dignity Health pursuant to the November 9, 2015
19 Customer Agreement, amended effective February 2017 (“Customer
20 Agreement”).³

21 Over one year later, on June 14, 2017, AMR moved to intervene in this
22 proceeding. Through that motion, AMR made plain its intention to oppose RBR’s
23

24 _____
25 ¹ *Dignity Health v. AMR Holdco Inc., et al.*, CV 2017-009481 (the “MCSC Litigation”).

26 ² As discussed during the July 26, 2017 preconference hearing, Applicant anticipates
27 (but cannot predict) that the expedited declaratory judgment and request for
28 preliminary injunction aspect of the MCSC Litigation could take 60 to 90 days. If a stay
is granted, Applicant commits to file status updates on the MCSC Litigation with the
ALJ.

³ See Exhibit A to Applicant’s Response to Motion for Intervening Party Status.

1 CON Application. In response, Applicant objected to AMR's effort to intervene
2 because the Customer Agreement expressly and explicitly prohibits AMR from
3 intervening in this CON proceeding. As the ALJ knows, the contractual language
4 at issue can be found at ¶18 of the Customer Agreement, which provides:

5 Provider [AMR] shall not do anything or cause any other
6 person to do anything that interferes with Dignity Health's
7 efforts to engage any other person or entity for the
8 provision of some or all of the Services, or interferes in any
9 way with any relationship between Dignity Health and any
10 other person or entity who may be engaged to provide some
11 or all of the Services to Customer, and **shall not initiate
12 legal action or take any other action to challenge the
13 right of Dignity Health to enter into a services
14 agreement with another organization, or to develop
15 its own capability or authority to provide Services
16 to its patients.** (Dignity Health Verified Complaint, ¶10
17 emphasis added).

14 Both Dignity Health and Applicant take the position that RBR is the means
15 through which Dignity Health seeks "to develop its own capability or authority"
16 to provide ambulance service to Dignity Health patients.

17 On July 14, 2017, Dignity Health filed a motion to intervene in this
18 administrative proceeding for the limited purpose of addressing issues related to
19 the Customer Agreement. Through its motion, Dignity Health argued that
20 ADHS (and by extension the Office of Administrative Hearings ("OAH")) lacks
21 the statutory authority to interpret the Customer Agreement, should decline to
22 do so, and instead permit Dignity Health and AMR to resolve this discrete
23 threshold issue in superior court. Applicant has responded in support of Dignity
24 Health's motion to intervene.

25 ADHS and AMR both filed responses to Dignity Health's Motion to
26 Intervene. Although initially AMR agreed that the ALJ did not have jurisdiction
27 to interpret and resolve the Customer Agreement issue. During the July 26, 2017
28 preconference hearing, AMR indicated that it now joins ADHS's view that the

1 ALJ has jurisdiction to interpret and enforce the Customer Agreement. AMR
2 formalized that agreement on July 31, 2017 by filing its Notice of Withdrawal of
3 Response to Dignity Motion to Intervene. Despite differing opinions on the
4 jurisdictional issues, however, ADHS agrees with Dignity Health and Applicant
5 that the Customer Agreement issues must first be resolved before prehearing
6 deadlines or hearing dates can be scheduled.

7 On July 25, 2017, Dignity Health filed its Verified Complaint (“VC”)
8 against AMR in the MCSC Litigation. In addition to a breach of contract claim
9 seeking damages, Dignity Health seeks expedited declaratory judgment relief
10 and the issuance of an injunction prohibiting AMR from intervening in RBR’s
11 CON Application proceedings. (Verified Complaint at ¶¶42-46.) Specifically,
12 pursuant to A.R.S. § 12-1832, Dignity Health requests a judgment declaring,
13 among other things, (1) that AMR breached the non-intervention provision (¶18)
14 of the Customer Agreement by moving to intervene in these proceedings and
15 plainly expressing its intent to oppose RBR’s CON application, and (2) that the
16 Customer Agreement prohibits AMR from attempting to intervene in the RBR
17 CON Application proceedings. (Verified Complaint, ¶44). As permitted by Ariz.
18 R. Civ. P. 57, Dignity Health seeks “a speedy hearing” and an expedited ruling
19 on its request for a declaratory judgment. (*Id.*, at ¶45.)

20 Additionally, Dignity Health asks the MCSC to issue an injunction that
21 prohibits AMR from intervening in this administrative proceeding, even after the
22 termination of the Customer Agreement, and that bars AMR from interfering
23 with Dignity Health’s efforts to establish an ambulance service through the RBR
24 CON Application proceeding. (Verified Complaint, Prayer for Relief, ¶3.)

25 Under these current procedural and factual circumstances, it is both
26 justified and warranted for the ALJ to grant a stay to allow Judge Martin an
27 opportunity to declare the rights and obligations of the parties to the Customer
28 Agreement on a speedy and expedited basis before the ALJ considers AMR’s

1 Motion to Intervene and sets any prehearing deadlines or hearing dates.

2 **2. The ALJ has broad discretion to grant a stay.**

3 Courts generally have “broad discretion” to determine whether to stay
4 proceedings. *Clinton v. Jones*, 520 U.S. 681, 706 (1997) (citation omitted); *F. C.*
5 *Y. Const. & Equip. Co., Inc. v. Superior Court*, 24 Ariz. App. 596, 597, 540 P.2d
6 722 (1975) (concluding a “trial court in its discretion, may grant a stay.”) “[T]he
7 power to stay proceedings is incidental to the power inherent in every court to
8 control the disposition of the causes on its docket with economy of time and effort
9 for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254
10 (1936). Such discretion should be exercised here.

11 **2.1 *A stay will conserve judicial and party resources.***

12 As an initial matter, staying the administrative proceedings on RBR’s
13 CON Application will conserve the resources of the parties, their counsel, the
14 ALJ, and the OAH. To be sure, requiring briefing and an evidentiary hearing in
15 this Office concerning the force and effect of ¶18 of the Customer Agreement,
16 while that threshold contract issue is simultaneously litigated before Judge
17 Martin, would unavoidably result in costly duplicative litigation efforts by AMR,
18 Dignity Health, potentially RBR, as well as counsel. A stay will avoid any such
19 costly duplication of efforts by these parties in simultaneous and parallel legal
20 proceedings and conserve the time and resources of all involved in the CON
21 Application proceeding – including current intervenors (Maricopa Ambulance
22 and ABC Ambulance), ADHS, the ALJ, and OAH who may altogether avoid
23 expending time, money and other resources on the Customer Agreement issues
24 if a stay is granted.

25 In the interests of judicial economy and conservation of party resources, a
26 stay of the application proceedings is appropriate.

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2.2 A stay will avoid inconsistent outcomes on the interpretation of the Customer Agreement.

Further, staying this proceeding will entirely avoid any potential for inconsistent outcomes in the interpretation and application of the Customer Agreement. Those issues are now squarely before the MCSC, and the declaratory judgment action will likely proceed on an expedited basis pursuant to Ariz. R. Civ. P. 57. If the ALJ elects not to stay this matter, and instead sets a briefing schedule and hearing on the rights and obligations of the Customer Agreement, there is a real risk of inconsistent rulings in the overlapping litigation conducted simultaneously on this issue. The potential risk of inconsistent outcomes from the ALJ and MCSC on the same contract issues will only further slow the CON Application process by increasing the potential that the parties will seek special action and/or appellate relief, which will in turn increase inefficiencies and costs to all parties with an interest in these issues. To avoid any inconsistent outcomes in the interpretation of the Customer Agreement, and to avoid the litigation that might arise in the event of inconsistent decisions on the same contract issues, Applicant asks the ALJ to exercise her discretion and grant the stay request.

2.3 A stay will not prejudice any party interested in RMR's CON application.

Finally, and most importantly, there is absolutely no prejudice to any party interested in this proceeding should the ALJ briefly stay RBR's CON Application hearing pending the resolution of the declaratory judgment claim in the MCSC Litigation. In fact, only RMR suffers by its request for a stay in that its ability to proceed expeditiously with its CON Application is delayed. But this delay is outweighed by permitting Dignity Health to assert its rights in the MCSC Litigation and require AMR (and its subsidiaries) – the largest ambulance service provider in Maricopa County – to adhere to its arm's length contractual agreement not to oppose, interfere or intervene in RBR's effort to obtain a CON to provide ambulance services to Dignity Health's patients. Nevertheless,

1 because no other interested party to RBR's CON Application can claim it would
2 be prejudiced by a stay in the Application proceedings, the ALJ is free to exercise
3 her broad discretion and grant RBR's motion to stay.

4 **3. Conclusion.**

5 For the foregoing reasons, Applicant respectfully requests that the ALJ
6 grant this motion and stay the present CON Application proceedings so the
7 MCSC may interpret and provide direction about the scope and effect of the
8 Customer Agreement's non-interference provision -- a threshold issue that must
9 be resolved before this Office rule on AMR's motion to intervene.

10
11 RESPECTFULLY SUBMITTED this 1st day of August, 2017

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21 **ORIGINAL** filed this 1st day
22 of August, 2017 via the OAH
23 electronic document filing system
24 <https://portal.azoah.com/oedf>, with
25 copies provided to all parties on the
26 approved mailing list by posting
27 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.

28 By: /s/ Brendan Murphy