

1 MARK BRNOVICH
2 Firm Bar No. 014000
3 Attorney General

4 Kevin D. Ray (#007485)
5 Patricia LaMagna (#021880)
6 Molly Bonsall (#032477)
7 Assistant Attorneys General
8 Education Health Section
9 1275 West Washington Street
10 Phoenix, Arizona 85007
11 Telephone: (602) 542-8328
12 Facsimile: (602) 364-0700
13 E-mail: EducationHealth@azag.gov
14 *Attorneys for Arizona Department of Health Services,*
15 *Bureau of Emergency Medical Services and Trauma System*

16 IN THE OFFICE OF ADMINISTRATIVE HEARINGS

17 In the Matter of:
18 RBR Management LLC, dba Community
19 Ambulance,
20
21 Applicant

Case No.: 2017-EMS-0104-DHS

**ADHS/BEMSTS' RESPONSE TO
APPLICANT'S MOTION TO STAY**

(Assigned to the Hon. Tammy Eigenheer)

22 The Arizona Department of Health Services (“ADHS” or “Department”), Bureau
23 of Emergency Medical Services and Trauma System (“the Bureau”), hereby responds to
24 the Applicant’s Motion to Stay. The Bureau maintains that the Administrative Law
25 Judge (“ALJ”), by way of the statutory authority of the Department, has authority to
26 review ¶ 18, the disputed provision in the Customer Agreement between Dignity and
27 AMR. *See* RBR Management LLC’s Response to Motion for Intervening Status, June
28 22, 2017, at Exhibit A (the “Service Contract”). In addition, the Bureau also believes
that the Maricopa County Superior Court (“Superior Court”) has concurrent jurisdiction
over the interpretation of the Service Contract. If ALJ Eigenheer chooses to defer to the
Superior Court regarding determination of ¶ 18 of the Service Contract, she may
exercise her discretion and grant a stay of the administrative hearing in this matter. *See*
Arizona Administrative Code (“A.A.C.”) R9-19-102(C).

1 **I. The Administrative Law Judge Should Use Her Discretion to Determine**
2 **Whether to Stay the Administrative Hearing.**

3 **A. The Department’s Authority to Oversee All Ground Ambulance**
4 **Services, Including Contract Review and the Service Contract,**
5 **Extends to the ALJ.**

6 Under A.R.S. §36-2232(A), the Director is granted broad oversight of ambulance
7 service in this state to ensure fair rates, adequate response times, safe ambulances, and
8 generally regulate all matters that affect ambulance service to the public. Notably, the
9 Arizona Legislature granted the Department authority to “[d]etermine, fix, alter and
10 regulate...contracts for services related to the provision of ambulances.” A.R.S. §36-
11 2232(A)(1). Pursuant to the rulemaking authority granted to the Department under
12 A.R.S. § 36-2232(A), A.A.C. R9-25-1104 was promulgated to require every certificate
13 of necessity holder to seek approval of all ground ambulance service contracts. Because
14 ¶ 18 of the Service Contract is both a part of an ambulance service contract and is
15 “related to the provision of ambulances,” the Department has clear authority to review
16 the Service Contract.

17 Because RBR Management dba Community Ambulance, (the “Applicant”) originally
18 introduced the theory that the disputed ¶ 18 of the Service Contract bars AMR
19 from intervening status, the ALJ may review and interpret that provision insofar as it
20 relates to AMR’s motion to intervene submitted pursuant to Rule 24 of the Arizona
21 Rules of Civil Procedure.¹ In order to determine if AMR’s Motion to Intervene,
22 pursuant the Rule 24, Ariz.R.Civ.P., is barred based on ¶ 18 of the Service Contract, the
23 ALJ would have to exert her jurisdiction to interpret the Service Contract to make such a
24 ruling. Through the Department’s authority to regulate ground ambulance service and
25 the ALJ’s authority to conduct evidentiary hearings related thereto, the Department
26 affirms its position that such authority gives the ALJ jurisdiction to determine *all issues*
27 relating the Applicant’s request to be granted a Certificate of Necessity for ground

28 ¹ By requesting the ALJ grant a stay, the Applicant seems to concede this point because
without authority to review the disputed provision of the Service Contract, the ALJ
would have no reason to defer to Superior Court or grant a stay.

1 ambulance service, including jurisdiction to determine if ¶ 18 of the Service Contract
2 bars AMR's request to intervene.

3 **B. Arizona Law Supports the Superior Court's Concurrent Jurisdiction**
4 **to Interpret the Disputed Provision of the Service Contract.**

5 In the context of administrative law, exclusive jurisdiction is vested in an
6 administrative tribunal only when the matters at issue relate "solely and directly" to the
7 regulated activity. *Qwest Corp. v. Kelly*, 204 Ariz. 25, 30, ¶ 13 (App. 2002) (stating that
8 the Arizona Corporation Commission's jurisdiction is exclusive only to "questions of the
9 reasonableness of services, rates and the classification of services.") Concurrent
10 jurisdiction between the administrative tribunal and the superior courts exists when the
11 claims at issue "...are unrelated or attenuated from those matters over which the
12 [administrative tribunal] has express constitutional or statutory authority." *Campbell v.*
13 *Mountain States Tel. & Tel. Co.*, 120 Ariz. 426, 432 (App. 1978). Thus the dividing line
14 between exclusive and concurrent jurisdiction is not easily drawn, but the Bureau
15 believes this is an instance of concurrent jurisdiction for the following two reasons.

16 First, while the claimed wrong – breach of contract – stems from an ambulance
17 service contract, the supposed breach is only tangentially related to things like rates,
18 response times, and safety of transport vehicles. If ¶ 18 were written as an anti-compete
19 clause in any other type of corporate agreement, the Bureau likely would not assert any
20 authority for the Department to review it. Second, a breach of contract claim is one that
21 requires an analysis of whether a civil wrong was committed. The case law is clear that
22 this is a task which courts of general jurisdiction are especially well suited to handle, and
23 which is traditionally left to them.

24 Again, the distinction between exclusive and concurrent jurisdiction is not always
25 clear, but the Bureau believes the Superior Court has concurrent jurisdiction over
26 interpretation of this contract, and it is within the ALJ's discretion to defer to the
27 Superior Court's expertise and grant Applicant's requested stay if she chooses to do so.
28

1 **II. If a Stay is Granted, the Bureau Requests ALJ Eigenheer Make Specific**
2 **Findings.**

3 If the ALJ grants the requested stay, the Bureau asks that she include an
4 acknowledgement of the Department's and the ALJ's authority to review and interpret
5 the disputed term. Additionally, the Bureau requests that the ALJ make note of the fact
6 that any delay in proceedings due to the stay are not the fault of either the Office of
7 Administrative Hearings or ADHS.

8 **III. Conclusion**

9 The Bureau maintains that the Department and the ALJ have authority to interpret
10 the disputed contract term for all the reasons previously stated. However, it believes the
11 Superior Court has concurrent jurisdiction and that the ALJ has broad discretion to stay
12 these proceedings if she believes the Superior Court should make a ruling prior to her
13 decision on AMR's intervention.

14 DATED this 15th day of August, 2017.

15 MARK BRNOVICH
16 Attorney General

17 /s/ Kevin D. Ray
18 Kevin D. Ray
19 Patricia LaMagna
20 Molly Bonsall
21 Assistant Attorneys General
22 *Attorneys for BEMSTS*
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 **ORIGINAL** filed using the OAH electronic document filing system
3 <https://portal.azoah.com/oedf> this 15th day of August, 2017, with copies provided to all
4 parties on the approved mailing list this 15th day of August, 2017, by posting through
5 the designated OAH website at <https://portal.azoah.com/oedf/documents/2017-EMS-0104-DHS/index.html>.

6
7 By: /s/ Koren Lyons
8 PHX #6122982

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28