

1 **Quarles & Brady LLP**
2 Firm State Bar No. 00443100
3 One South Church Avenue
4 Suite 1700
5 Tucson, Arizona 85701-1621
6 TELEPHONE 520.770.8700
7 FACSIMILE 520.623.2418

8 **Adriane J. Hofmeyr - State Bar No. 025100**
9 adriane.hofmeyr@quarles.com

10 *Attorney for ABC Ambulance, LLC*

11 **BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**

12 In the Matter of: 13 14 RBR Management LLC, dba Community Ambulance 15 16 Applicant.	17 Docket No. 2017-EMS-0104-DHS 18 (EMS No. 0283) 19 ABC AMBULANCE'S OBJECTIONS TO AND MOTION TO QUASH APPLICANT'S SUBPOENA DUCES TECUM 20 21 (Assigned: The Hon. Tammy Eigenheer)
--	---

22 Pursuant to A.R.S. § 41-1092.07(D) and Arizona Administrative Code ("AAC") R2-19-
23 113(D) and (E), ABC Ambulance, LLC ("ABC") respectfully requests that the Administrative Law
24 Judge quash the subpoena filed by Applicant RBR Management, LLC, dba Community Ambulance
25 ("Applicant") on May 11, 2018 and issued by the Administrative Law Judge ("ALJ") on July 5,
26 2018 ("Subpoena").

27 Applicant's Subpoena seeks the production of documents from ABC that are not relevant to
28 Applicant's Application,¹ in particular to the factors set forth in A.R.S. § 36-2233 and AAC § R9-
25-903, the burden of which is on Applicant to prove (AAC § R2-19-119(B)). Nor are Applicant's
requests proportional to the needs of the case.

Applicant has not made a single allegation against ABC and thus has no need for discovery.
Applicant's allegations are philosophical in nature – that "competition" is better, and that providing
ambulance services to one's own patients somehow qualifies as required "public necessity." None
of this requires discovery.

¹ See Application for Certificate of Necessity filed by Applicant on June 10, 2016, as supplemented ("Application").

1 Further, Applicant mistakenly believes that, simply because it has filed an application with
2 the Arizona Department of Health Services ("ADHS") for a CON (defined herein), it is entitled to
3 assume the role of "regulator for a day" and demand from current CON holders information to
4 which only ADHS is entitled (and ADHS has statutory authority to view such records). It is a
5 preposterous assumption to believe anyone filling out an application for a CON is granted authority
6 to take on the privileges and responsibilities of being the regulator. Other than the documents that
7 are public records,² the documents Applicant seeks are almost without exception commercially-
8 sensitive, confidential and proprietary business information belonging to ABC. Allowing Applicant
9 to become the regulator, and giving it access to this sensitive information, allows Applicant to gain
10 a competitive advantage over ABC (and every other CON holder, from whom the same information
11 is requested) should Applicant be granted a CON. This is not the purpose of discovery in a CON
12 hearing.

13 The ALJ is respectfully requested to quash the Subpoena almost in its entirety, with the few
14 exceptions as noted under Heading D below.

15 This motion is supported by the attached Memorandum of Points and Authorities, as well
16 as all matters of record herein.

17 MEMORANDUM OF POINTS AND AUTHORITIES

18 A. LEGAL STANDARD

19 1. Subpoena must be quashed if compliance is unreasonable and oppressive

20 An administrative law judge "shall" quash or modify a subpoena if (1) "it is unreasonable
21 or oppressive," or (2) "the desired testimony or evidence may be obtained by an alternative
22 method." AAC R2-19-113(E) (emphasis added).

23 Rule 26(b)(1), Ariz. R. Civ. P., provides that "Parties may obtain discovery regarding any
24 nonprivileged matter that is **relevant** to any party's claim or defense and **proportional** to the needs
25 of the case, considering the importance of the issues at stake in the action, the amount in
26 controversy, the parties' relative access to relevant information, the parties' resources, the
27

28 ² Which requests Applicant has withdrawn for this reason (see below).

1 importance of the discovery in resolving the issues, and whether the burden or expense of the
2 proposed discovery outweighs its likely benefit" (emphasis added).

3 "Relevancy alone is no longer sufficient — discovery must also be proportional to the needs
4 of the case." *In re Bard IVC Filters Products*, 317 F.R.D. 562, 564 (D.Ariz. 2016).³ "The parties
5 and the court have a collective responsibility to consider the proportionality of all discovery and
6 consider it in resolving discovery disputes." *Id.* (quoting Rule 26, Advis. Comm. Notes for 2015
7 Amends.) In *Bard*, the court did not order discovery of certain communications, finding that "the
8 discovery appears to be only potentially relevant – more hope than likelihood." On this ground, the
9 court found the communications were not "relevant." *Id.* at 566.

10 "Fishing expeditions" are not favored by courts. *See*, for example, *Fisher v. IASIS*
11 *Healthcare LLC*, No. CV-15-00872-PHX-JJT, 2018 WL 2303030, at *2 (D. Ariz. May 21, 2018)
12 ("Defendants assert that the requests are premised on 'Relators' speculative and wholly novel theory
13 [that] is not based on facts' and 'amount to a fishing expedition.' (*Id.* at 4-5). The Court concurs.").

14 "Overbroad subpoenas must be quashed or modified because they impose an undue
15 burden on the subpoenaed party." *Xcentric Ventures, L.L.C. v. Borodkin*, 934 F.Supp.2d 1125,
16 1144 (D.Ariz. 2013). "[R]elevancy... is the test in determining whether evidence sought by a
17 subpoena duces tecum is proper." *Helge v. Druke*, 666 P.2d 534, 538 (Ariz.App. 1983); and *see*
18 *Mattel, Inc. v. Walking Mountain Prods.*, 353 F.3d 792, 813-14 (9th Cir. 2003) (subpoena properly
19 quashed when it sought testimony and production as to topics that had no bearing on claims or
20 defenses in action).

21 **2. Subpoena may be quashed if it requires disclosing a trade secret or other**
22 **confidential information**

23 A subpoena may be quashed where it requires disclosing a trade secret or other
24 confidential research, development or commercial information. Ariz. R. Civ. P. 45(e)(2)(B)(i).

25 Trade secrets under Arizona law may consist of a compilation of information that is
26 continuously used or has the potential to be used in one's business and that gives one an opportunity
27 to obtain an advantage over competitors who do not know of or use it. A.R.S. § 44-401(4); *Joshua*

28 ³ The new Arizona rule mirrors the federal rule on proportionality.

1 *David Mellberg LLC v. Will*, 96 F.Supp.3d 953 (D.Ariz. 2015). The "hallmark of trade secrets is
2 their secrecy." *Id.* at 964.

3 Where there is an assertion that information sought is a trade secret and its disclosure
4 might be harmful, the burden shifts to the requesting party to establish that disclosure of the
5 requested trade secret is both relevant and necessary. *R & D Bus. Sys. v. Xerox Corp.*, 152 F.R.D.
6 195, 196-97 (D.Colo. 1993). If the requesting party can satisfy this burden, the ALJ must balance
7 the need for disclosure against the injury that would result from that disclosure. *Id.* But if proof
8 of relevancy or need is not established, discovery should be denied. *Id.*

9 The ALJ may quash or modify a subpoena to the extent it seeks confidential commercial
10 information (even if it is not technically a "trade secret") that would cause "substantial economic
11 harm" to the competitive position of the entity from whom it is obtained. *See, e.g., DRK Photo v.*
12 *McGraw-Hill Cos.*, CV 12-8093-PCT-PGR, 2012 U.S. Dist. LEXIS 148500 (D.Ariz. Oct. 16,
13 2012) (granting protective order where discovery sought information concerning defendant's
14 financial and business performance, strategies, and projections, which were non-public, trade
15 secret, and sensitive commercial information, the public disclosure of which would substantially
16 harm the defendant's competitive market position and aid its competitors).

17 **B. RELEVANCE IS DETERMINED BY THE STATUTORY AND REGULATORY**
18 **REQUIREMENTS APPLICANT MUST PROVE TO QUALIFY FOR A CON**

19 To qualify for a CON,⁴ Applicant must satisfy the requirements of A.R.S. § 36-2233(B),
20 including (and only relevant here) convincing the director that "public necessity REQUIRES the
21 service or any part of the service proposed by the applicant," and that "the applicant is fit and proper
22 to provide the service" (emphasis added).

23 These terms, as defined below, are the only factors that are relevant to these proceedings,
24 and limit the scope of discovery to which Applicant is entitled.

25 **1. The parameters of "public necessity" are defined**

26 "Public necessity" is defined as "an identified population needs or requires all or part of the
27 services of a ground ambulance service." AAC R9-25-901(33).

28

⁴ Certificate of Necessity ("CON"), as set out in A.R.S. § 36-2233.

1 In determining "public necessity" where there is more than one service for convalescent or
2 interfacility transport for the same or overlapping service areas (as here), the Director shall
3 consider:

- 4 (1) Population demographics,
- 5 (2) Geographic distribution of health care institutions,
- 6 (3) "The existence of ground ambulance service to all or part of the service area,"
- 7 (4) "The availability of certificate holders in all or part of the service area,"
- 8 (5) "The availability of emergency medical services,"
- 9 (6) "Other matters to be determined by the Director or the applicant to be relevant to the
10 determination of public necessity,"
- 11 (7) "The financial impact on certificate holders whose service area includes all or part of"
12 the proposed service,
- 13 (8) "The need for additional convalescent or interfacility transport," and
- 14 (9) "Whether a certificate holder for the service area has demonstrated substandard
15 performance." *See* AAC R9-25-903(A)-(B).

16 Possible "substandard performance" of an existing CON holder *is not a broad, catch-all*
17 *factor* entitling an applicant to attack existing CON holders – it is specifically and clearly defined
18 as being *limited to* a certificate-holder's *non-compliance* with Title 36, 9 AAC 25, or the terms of a
19 certificate holder's CON; failure to ensure ambulance attendants comply with Title 36 and 9
20 AAC 25; and failure to meet the requirements of 9 AAC 25, Art. 10 (dealing with vehicle
21 registration). *See* AAC R9-25-901(46). (Note that Applicant has made *no allegations* that ABC has
22 engaged in "substandard performance." Applicant has made no allegations relating to ABC at all.)

23 **2. The parameters of "fit and proper" are defined**

24 "Fit and proper" is defined as "an applicant for a certificate of necessity ... has the expertise,
25 integrity, fiscal competence and resources to provide ambulance service in the service area."

26 This standard *applies only to an applicant*. Whether an existing CON holder is "fit and
27 proper" is utterly irrelevant to establish whether a newcomer is entitled to a CON.
28

1 **3. Burden of proof is on Applicant**

2 "Unless otherwise provided by law ... the party asserting a claim, right, or entitlement has
3 the burden of proof." AAC R2-19-119(B)(1).⁵

4 **C. APPLICANT SEEKS ONLY TO OFFER INTERFACILITY TRANSPORTS TO**
5 **DIGNITY FACILITIES**

6 In its Application filed on June 10, 2016, Applicant requests that it be granted a CON to
7 conduct only non-911, ALS and BLS, service in Maricopa County. However, the details of its
8 Application reveal that Applicant (or rather, Dignity Health) is simply trying to vertically integrate
9 its business operations in Arizona. It has no stated plans to offer its services to the public at large,
10 but rather plans merely to provide in-house services to Dignity Health facilities only. For example,
11 Applicant states in its Application that it plans to service Dignity Health's **six hospitals** in Maricopa
12 County; that it wants to meet "the **needs of Dignity Health** at all of its facilities;" that "Dignity ...
13 fully supports Community Ambulance Transports **to the Dignity Health facilities** in Maricopa
14 County;" that "Dignity desires to tailor an inter-facility patient transportation solution to the
15 particular needs of the **patients it serves**;" and that "Community Ambulance partnership with
16 Dignity Health is designed ... around a **specifically defined population** and their needs." *See*
17 Exhibits ADHS 1-0003, 0004, 0007, 0017 (emphasis added). Moreover, Applicant's primary
18 witness, Jeff O'Malley (of Dignity Health), will testify to "Dignity's efforts to develop an integrated
19 ambulance service to provide transports for **its patients**." Applicant's Disclosures, p. 2:13
20 (emphasis added). In its own words, Applicant proposes simply to serve the needs of its majority
21 shareholder, Dignity Health. It is disingenuous for Applicant to claim, in justifying its invasive
22 discovery requests, that it requires ABC's business records to show that the *public* needs require
23 Applicant's service.

24 In its Application, Applicant appears to be unaware of ABC's existence. It states that CON
25 services in Maricopa County have "dwindled to only two ambulance providers owned by two
26 different organizations." *See* Exhibit ADHS 1-0003 (it is unclear whether Applicant is unaware of

27 ⁵ "A party asserting an affirmative defense has the burden of establishing the affirmative defense." AAC R2-19-
28 119(B)(2). No party in these proceedings is asserting any defense, and thus this sub-section is not relevant to these
proceedings.

1 ABC or of intervenor Maricopa Ambulance - it is surely very aware of the presence of AMR, with
2 whom Dignity contracted for just such services).

3 In its Application, Applicant makes no allegations whatsoever that ABC offers, or has
4 offered, "substandard performance" or in any way is not complying with its CON. Its Subpoena is
5 thus merely a fishing expedition to see what it can come up with *during these proceedings*, based
6 on ABC's own business records, to discredit ABC.

7 Moreover, Applicant appears to misconstrue the constitutional parameters of the business
8 it is attempting to enter. It appears to believe that "competition" is what is envisaged by the Arizona
9 constitutional and statutory framework for ambulance services in Arizona. *See*, for example,
10 "Ambulance service being provided lacks much in the way of competition." *See* Exhibit ADHS 1-
11 0003. "Competition," of course, is nowhere mentioned in the statute; on the contrary, ambulance
12 services are public service companies and are highly regulated by the state, with only a limited
13 number permitted, based on "public need" being REQUIRED for an additional Certificate of
14 Necessity to be issued.

15 **D. SPECIFIC RESPONSES TO EACH OF APPLICANT'S REQUESTS**

16 In light of the factors set out above, as well as the specific allegations in Applicant's own
17 Application, ABC objects to Applicant's 25 categories of documents,⁶ as follows:

- 18 1. Requests No. 1 to 5: withdrawn.
- 19 2. Request No. 6: ABC objects to this request on the grounds that it is irrelevant to the
20 factors Applicant must show to qualify for a CON. Whether or not ABC has documents to show
21 that it "exceeds" the two standards chosen by Applicant is irrelevant to whether (1) Applicant is "fit
22 and proper;" or (2) Applicant can show "public necessity" for its proposed service. First, ABC has
23 already established that it qualifies for a CON, and meets the constitutional and statutory
24 requirements enforced by ADHS (not to mention ABC's fitness is not at issue in these proceedings
25 at all). Second, whether ABC has documents to show that it "exceeds" these arbitrarily-chosen
26 standards is irrelevant to "public necessity." As with all of Applicant's requests, Applicant is simply
27

28 ⁶ Applicant originally requested 34 categories of documents, but has voluntarily withdrawn nine requests.

1 angling for information in the hopes that it will find something to show "substandard performance"
2 on the part of ABC. However, the regulations make it very clear that this factor is *limited to a*
3 certificate-holder's *non-compliance* with Title 36, 9 AAC 25, or the terms of a certificate holder's
4 CON; failure to ensure ambulance attendants comply with Title 36 and 9 AAC 25; and failure to
5 meet the requirements of 9 AAC 25, Art. 10 (dealing with vehicle registration). *See* AAC R9-25-
6 901(46). Applicant's request has nothing whatsoever to do with whether ABC and its employees
7 are in compliance with statutory requirements (they are). This request should be denied.

8 3. Request No. 7: This request demands disclosure of every document in ABC's
9 possession relating to its business. It should be quashed simply on the grounds that it is overbroad
10 and overly burdensome alone. At a very minimum, Applicant should be required to tailor and
11 narrow this request, rather than being permitted to throw the net as wide as possible, in the hopes
12 of finding something "useful." In addition, ABC's business records are not relevant to the grounds
13 Applicant must prove - they will not help Applicant show that it is "fit and proper;" they will not
14 help Applicant show that there is a "public need" for Applicant's proposed services; they certainly
15 will not help Applicant show that *Dignity Health* requires its services. This request is also
16 completely not proportional to the issues in this case. When analyzing the "importance of the issues
17 at stake" (part of the proportionality test) in this hearing, having an existing CON holder expose for
18 general consumption its entire set of business records and communications is vastly disproportional
19 to other factors that Applicant must prove. ABC also objects on the grounds that this information
20 (other than publicly available information) constitutes confidential, commercially-sensitive, and
21 proprietary business information belonging to ABC, some of which constitute trade secrets of ABC.
22 As such it is protected from disclosure. Ariz. R. Civ. P. 45(e)(2)(B)(i). Moreover, the burden is
23 on Applicant to show that the disclosure is "both relevant and necessary." *R & D Bus. Systems,*
24 *supra*. Applicant has made no such attempt, making only a cursory statement that all of its requests
25 are "relevant to the ambulance service currently provided by" ABC and to the "relevant factors set
26
27
28

1 forth in A.A.C. § R9-25-903".⁷ This is insufficient to show why ABC should be compelled to
2 disclose its most private business information to a potential competitor.

3 4. Request No. 8: Again, the information Applicant seeks is unrelated and irrelevant to
4 its Application. Whether ABC has "operational plans" relating to "rural areas" is unrelated to ABC's
5 CON or any statutory requirements imposed on ABC. Moreover, it is unrelated to whether ABC
6 exhibits "substandard performance," as defined in the regulations. In addition, ABC's "operational
7 plans," if any, are proprietary, confidential and commercially-sensitive. ABC goes to great lengths
8 to keep its business plans secret. Moreover, ABC's plans fall within the definition of "trade secrets"
9 (a compilation of information that is continuously used or has the potential to be used in one's
10 business and that gives one an opportunity to obtain an advantage over competitors who do not
11 know of or use it. *Joshua David Mellberg LLC, supra*; A.R.S. § 44-401(4)). They are thus protected
12 from disclosure information.

13 5. Request No. 9: withdrawn.

14 6. Request No. 10: ABC objects to this request on many grounds. It is a perfect
15 example of Applicant trying to play "regulator for a day." First, it uses vague and ambiguous jargon,
16 and is thus difficult to know what Applicant is after. Second, Applicant is requesting information
17 that even ADHS (the governing authority) does not require of a CON holder (ADHS does not
18 require that CON holders, for example, track "periods of unusual system overload" or "late
19 responses due to severe weather conditions"). Third, finding this information would be unduly
20 burdensome. Whether a transport was delayed by "severe weather conditions" is recorded on the
21 individual patient's forms, which are submitted to ADHS, and are moreover protected HIPAA
22 documents. ABC keeps no separate records tracking the factors requested by Applicant, for
23 example "severe weather conditions." Fourth, these factors are irrelevant to any of the factors
24 Applicant must show, as argued above. Finally, this information constitutes protected,
25 commercially-sensitive trade information.

26
27
28

⁷ Subpoena Request, p. 2:2-4.

1 7. Request No. 11: Without waiving its objections to this request based on relevancy
2 and protected trade information (for the reasons set out in the paragraphs above), ABC will provide
3 its audited financial statements for 2015 to 2017 to Applicant.

4 8. Request No. 12: ABC objects to this request. Its unaudited financial statements are
5 irrelevant to Applicant's Application for every reason set out in the paragraphs above. Moreover,
6 they are protected trade information.

7 9. Request No. 13: Without waiving its objections to this request based on relevancy
8 and protected trade information (for the reasons set out in the paragraphs above), ABC will provide
9 the budget submitted to ADHS as part of its application for a rate increase in early 2018 to
10 Applicant.

11 10. Request No. 14: See response to Request No. 13 above.

12 11. Request No. 15: The information requested is contained in ABC's ARCRRs which are
13 publicly available through ADHS (most recently submitted in June 2018), which for ease of
14 reference will be provided to Applicant.

15 12. Request No. 16: Without waiving its objections to this request based on relevancy
16 and protected trade information (for the reasons set out in the paragraphs above), ABC states that
17 it has no federal, state or local tax returns because it is a pass-through entity. However, the audited
18 financials, budgets and its annual ARCRR submitted to ADHS (which are either provided herein or
19 are publicly available) have been made available to Applicant.

20 13. Request No. 17: Without waiving its objections to this request based on relevancy
21 and protected trade information (for the reasons set out in the paragraphs above), ABC states that
22 it has had no tax reviews or audits.

23 14. Request No. 18: withdrawn.

24 15. Request No. 19: ABC objects to this request. Its personnel records (including
25 "employee/staff satisfaction scores" and "turnover reports") are irrelevant to Applicant's
26 Application for every reason set out in the paragraphs above, and this request is not proportional to
27 the needs of the case. They relate in no way to "public necessity" in any of its specifically-defined
28

1 categories, including "substandard performance" of a CON holder. ADHS, the regulating authority,
2 does not even require these types of records from CON holders. Moreover, personnel records are
3 highly protected information. *Whittingham v. Amherst College*, 164 F.R.D. 124, 127 (D.Mass.
4 1995) ("[P]ersonnel files contain perhaps the most private information about an employee within
5 the possession of an employer."). This is yet another example of Applicant's ambitious fishing
6 expedition, in the hopes of netting something unpleasant, albeit irrelevant, regarding ABC's
7 operations.

8 16. Request No. 20: Without waiving its objections to this request based on relevancy
9 and protected trade information (for the reasons set out in the paragraphs above), ABC states that
10 it has no documents responsive to this request.

11 17. Request No. 21: ABC objects to this request. First, the term "complaint" is vague,
12 undefined, and overly broad. Second, documents responsive to this request do not help Applicant
13 prove any of the factors it needs to show, and they therefore are irrelevant. This request is also not
14 proportional to the needs of the case. If Applicant is angling for information to help it show
15 "substandard performance," "the discovery appears to be only potentially relevant – more hope than
16 likelihood." *Bard, supra* (in which discovery was denied on this ground). The requested
17 information is not included in the specific definition of "substandard performance" (which relates
18 only to whether a CON holder is complying with its CON - not whether it gets "complaints" from
19 "any source").⁸ Third, these documents constitute confidential trade information.

20 18. Request No. 22: ABC's "information systems platform" is irrelevant to Applicant's
21 Application. It has nothing whatsoever to do with whether Applicant is "fit and proper," or whether
22 there is "public necessity" for Applicant's proposed service. Without waiving any objections to this
23 request, ABC states that the information system platform that it uses is AngelTrack software for
24 electronic records, and QuickBooks for the general ledger.

25
26
27 ⁸ Although AAC R9-25-910 provides that a CON holder must keep certain records available for inspection by ADHS,
28 the records referenced include highly confidential, HIPAA-protected patient information, and a CON holder is certainly
not obliged to provide copies of these documents simply because Applicant filled out an application.

1 19. Request No. 23: This request is an example of Applicant's overreach and attempt to
2 obtain commercially-sensitive information for its own personal gain, which is utterly irrelevant to
3 its Application, and is inversely proportional to the needs of the case. Not only is this request
4 breathtakingly overbroad and unduly burdensome, but it requests information that goes to the heart
5 of ABC's business, and constitutes an unabashed fishing expedition for ABC's proprietary trade
6 information. Applicant wants access to this information to conduct an ADHS-like audit of ABC's
7 business, the authority for which exists in no statute or regulation. It is simply using these
8 proceedings to gather data on a competitor to use to its own advantage if it is granted a CON. It has
9 made no attempt whatsoever to show that data from ABC's CAD system will assist it in establishing
10 that (1) Applicant is "fit and proper," or (2) that there is "public need" for an additional provider of
11 non-emergency services in Maricopa County. At best, this is mere harassment; at worst, it is
12 corporate theft.

13 20. Request No. 24: Without waiving its objections to this request based on relevancy
14 and protected trade information (for the reasons set out in the paragraphs above), ABC states that
15 it has no records showing that ABC (through its employees) referred any interfacility transport as
16 defined by AAC R9-25-901(25) to 911.

17 21. Request No. 25: Without waiving its objections to this request based on relevancy
18 and protected trade information (for the reasons set out in the paragraphs above), ABC states that
19 it has no records showing that ABC referred any transports to other CON holders.

20 22. Request No. 26: ABC objects to this request. First, the terms used by Applicant
21 constitute vague, undefined jargon. Second, documents responsive to this request are irrelevant to
22 the factors Applicant must prove. Third, ABC's "plans," if any, constitute confidential, proprietary
23 trade information and are expressly protected from disclosure (as argued above).

24 23. Request No. 27-30: Neal Thomas' testimony, as summarized in these requests, will
25 be based on any or all of Applicant's exhibits; on any or all of the exhibits of the other Intervenors
26 in these proceedings; and on ABC's exhibits, as supplemented. In addition, ABC will rely on notes
27 taken by Mr. Thomas immediately after a telephone call from Dignity's Jeff O'Malley in which
28

1 Mr. O'Malley explained Dignity's plan to use RBR for ambulance services once they finished
2 acquiring a majority of ownership. These documents will be provided to Applicant.

3 24. Request No. 31: ABC objects to this request. Communications between the
4 attorneys of the Intervenors are protected from disclosure by the attorney-client privilege and the
5 common interest doctrine. "If two or more clients with a common interest in a litigated or
6 nonlitigated matter are represented by separate lawyers and they agree to exchange information
7 concerning the matter, a communication of any such client that otherwise qualifies as privileged
8 [as attorney-client communications] that relates to the matter is privileged as against third persons.
9 Any such client may invoke the privilege, unless it has been waived by the client who made the
10 communication." *Arizona Indep. Redistricting Comm'n v. Fields*, 206 Ariz. 130, 142, 75 P.3d 1088,
11 1100 (App. 2003). Exchanged communications subject to the common interest doctrine must
12 themselves be privileged as well as related to the parties' common interest, "which may be either
13 legal, factual, or strategic in character." *Id.* (quoting Restatement § 76 cmt. e, Reporters Note cmt.
14 d.) The doctrine allows "persons similarly aligned on a matter of common interest" to exchange
15 privileged work product without waiving that privilege. *Id.* (quoting Restatement § 91 cmt. b.) The
16 intervenors in this matter have a common interest in almost every relevant factor - refuting "public
17 necessity," and refuting Applicant's claim that it is "fit and proper." This is exactly the situation that
18 the common interest doctrine was designed to protect.

19 25. Request No. 32: ABC received responses from the seven subpoenas that it caused
20 to be issued to seven public entities that Applicant approached for support. These documents will
21 be provided to Applicant.

22 26. Request No. 33: *See* response to paragraph 11 above.
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

27. Request No. 34: ABC currently has no documents responsive to this request.
RESPECTFULLY SUBMITTED this 25th day of July, 2018.

QUARLES & BRADY LLP
One South Church Avenue, Suite 1700
Tucson, Arizona 85701-1621

By /s/ Adriane J. Hofmeyr
Adriane J. Hofmeyr
Attorney for ABC Ambulance, LLC

CERTIFICATE OF SERVICE

Original filed using the OAH electronic document filing system <https://portal.azoah.com/oedf> this 25th day of July, 2018 with copies provided to all parties on the approved mailing list this 25th day of July, 2018 by posting through the designated OAH website as <https://portal.azoah.com/oedf/documents/2015A-EMS-0190-DHS/index.html> in accordance with Case Management Order No. 1.