

1 Andrew S. Gordon (003660)  
John C. Kelly (012770)  
2 Scott M. Bennett (022350)  
3 **COPPERSMITH BROCKELMAN PLC**  
2800 North Central Avenue, Suite 1900  
4 Phoenix, AZ 85004  
(602) 224-0999  
5 Fax: (602) 244-6020  
[agordon@cblawyers.com](mailto:agordon@cblawyers.com)  
6 [jkelly@cblawyers.com](mailto:jkelly@cblawyers.com)  
7 [sbennett@cblawyers.com](mailto:sbennett@cblawyers.com)  
*Attorneys for Dignity Health*

8  
9 **BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**

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11 In the Matter of: ) Docket No. 2017-EMS-0104-DHS  
) (EMS No. 0283)  
12 RBR Management, LLC, dba Community ) **DIGNITY HEALTH’S OBJECTIONS,**  
13 Ambulance ) **RESPONSES, AND MOTION TO**  
) **QUASH OR MODIFY SUBPOENA**  
14 ) ***DUCES TECUM* ISSUED AT THE**  
) **REQUEST OF MARICOPA**  
15 ) **AMBULANCE**  
16 )

17  
18 Dignity Health provides the following objections and responses to the subpoena *duces*  
19 *tecum* issued at the request of Maricopa Ambulance. In accordance with Ariz. Admin. Code §  
20 R2-19-113(E), Dignity Health requests that the ALJ quash or modify the subpoena to limit it to  
21 the requests and portions of requests to which Dignity Health has not objected.

22 Dignity Health objects to the extent the subpoena would require the production of  
23 documents that contain Protected Health Information (PHI) that is governed by the federal  
24 Health Insurance Portability and Accountability Act (HIPAA). Dignity Health has proposed to  
25 the parties to this proceeding a qualified protective order that would allow the production of  
26 PHI under HIPAA. Once Dignity Health and the parties have reached a mutually agreeable

1 resolution of that issue that meets the requirements of HIPAA, Dignity Health will produce the  
2 responsive documents that contain PHI.

3 **REQUEST #1**

- 4
- 5 1. All documents produced by Dignity Health in response to any subpoenas duces  
6 tecum issued by any Intervenor or by ADHS/BEMSTS in the administrative  
7 proceeding In the Matter of RBR Management LLC, dba Community  
8 Ambulance2017--EMS-0104-DHS.

9 **Response by Dignity Health:** Dignity Health has provided Maricopa Ambulance’s counsel  
10 with copies of Dignity Health’s responses to all other subpoenas in this matter, along with the  
11 documents produced with those responses.

12 **REQUEST #2**

- 13 2. All documents used, considered, or relied on by Applicant to determine that public  
14 necessity requires the ground ambulance service to be provided by Applicant if it  
15 is awarded a CON.

16 **Response by Dignity Health:** Dignity Health objects to this request because the word  
17 “requires” and the phrase “used, considered, or relied on” are vague, ambiguous, uncertain, and  
18 unworkably broad. *See* Ariz. Admin. Code § R2-19-113(E) (“The administrative law judge  
19 shall quash or modify the subpoena if: 1. It is unreasonable or oppressive . . .”).

20 Without waiving those objections, Dignity Health has produced Dignity/AMR000001-  
21 580; Dignity/CON001575-2349; Dignity/CON000142-1529; Dignity/CON000109-140;  
22 Dignity/CON002350-2436; and Dignity/CON000093-102. Maricopa Ambulance already has  
23 access to the CON application filed by Community Ambulance, as well as the exhibits  
24 designated by Community ambulance in this matter.

1 **REQUEST #3**

2 3. All documents used, considered, or relied on by Dignity Health to determine  
3 that existing CON holders, including but not limited to Maricopa Ambulance,  
4 are not fully meeting Dignity Health’s need for ground ambulance services in  
5 Maricopa County.

6 **Response by Dignity Health:** Dignity Health objects to this request because the phrase  
7 “used, considered, or relied on” is vague, ambiguous, uncertain, and unworkably broad. *See*  
8 Ariz. Admin. Code § R2-19-113(E) (“The administrative law judge shall quash or modify the  
9 subpoena if: 1. It is unreasonable or oppressive . . .”).

10 Without waiving those objections, Dignity Health has produced Dignity/AMR000001-  
11 580; Dignity/CON001575-2349; Dignity/CON000142-1529; Dignity/CON000109-140;  
12 Dignity/CON002350-2436; and Dignity/CON000093-102. Maricopa Ambulance already has  
13 access to the CON application filed by Community Ambulance, as well as the exhibits  
14 designated by Community ambulance in this matter.

15 **REQUEST #4**

16 4. All documents used, considered, or relied on by Jeffrey O’Malley to support  
17 his proposed testimony regarding (1) Dignity Health’s approximate needs for  
18 non-emergency interfacility transports within Applicant’s proposed service  
19 area, (2) Dignity Health’s efforts to develop relationships with CON holders in  
20 Maricopa County to provide interfacility transports for the Dignity Health  
21 population, specifically including but not limited to Maricopa Ambulance(3)  
22 his claim regarding substandard interfacility transport performance Dignity  
23 Health facilities have experienced by other CON holders in the proposed  
24 service area, and (4) meetings with representatives of Dignity Health hospitals,  
25 urgent care centers, and other associated facilities to discuss optimization of  
26 Dignity Health patient transports.

27 **Response by Dignity Health:** Dignity Health objects to this request because the phrase  
28 “used, considered, or relied on” is vague, ambiguous, uncertain, and unworkably broad. It is  
29 not clear, for example, whether these terms would require the production of any documents

1 Mr. O'Malley has ever seen that might have some conceivable relationship to his potential  
2 testimony. *See* Ariz. Admin. Code § R2-19-113(E) (“The administrative law judge shall quash  
3 or modify the subpoena if: 1. It is unreasonable or oppressive . . .”).

4 Without waiving those objections, Dignity Health has produced Dignity/AMR000001-  
5 580; Dignity/CON001575-2349; Dignity/CON000142-1529; Dignity/CON000109-140;  
6 Dignity/CON002350-2436; and Dignity/CON000093-102.

7 Maricopa Ambulance already has access to the CON application filed by Community  
8 Ambulance, as well as the exhibits designated by Community ambulance in this matter.

9 **REQUEST #5**

10 **5. All documents used, considered, or relied on by Linda Hunt to support her**  
11 **proposed testimony regarding (1) Dignity Health’s experiences with**  
12 **interfacility ambulance transportation, and the providers of ambulance services**  
13 **in the proposed service area (Maricopa County) and surrounding areas, (2)**  
14 **throughput issues in the Dignity Health systems, and the effects interfacility**  
15 **transport delays can have on efficient hospital operations, as well as patient**  
16 **care, outcomes, and satisfaction, (3) Dignity Health’s desire and need for an**  
17 **integrated interfacility ambulance service to better serve Dignity Health’s**  
18 **patient population.**

18 **Response by Dignity Health:** Dignity Health objects to this request because the phrase  
19 “used, considered, or relied on” is vague, ambiguous, uncertain, and unworkably broad. It is  
20 not clear, for example, whether these terms would require the production of any documents  
21 Ms. Hunt has ever seen that might have some conceivable relationship to her potential  
22 testimony. *See* Ariz. Admin. Code § R2-19-113(E) (“The administrative law judge shall quash  
23 or modify the subpoena if: 1. It is unreasonable or oppressive . . .”).

24 Without waiving those objections, Dignity Health has produced Dignity/CON001575-  
25 2349.

1 **REQUEST #6**

2 6. All documents used, considered, or relied on by Delores Kells to support her  
3 proposed testimony regarding delays the Urgent Care Centers experience in  
4 scheduling transports and in arrivals times of ambulances, the necessity of an  
5 additional provider of interfacility transports to efficiently move patients from  
6 the Urgent Care Centers to facilities with higher levels of care, throughput  
7 issues at the Urgent Care Centers, and instances of Dignity Health patients  
8 leaving Urgent Care Centers against medical advice to drive themselves to  
9 facilities with higher levels of care due to delayed interfacility transports.

10 **Response by Dignity Health:** Dignity Health objects to this request because the phrase “used,  
11 considered, or relied on” is vague, ambiguous, uncertain, and unworkably broad. It is not clear,  
12 for example, whether these terms would require the production of any documents Ms. Kells  
13 has ever seen that might have some conceivable relationship to her potential testimony. *See*  
14 *Ariz. Admin. Code § R2-19-113(E)* (“The administrative law judge shall quash or modify the  
15 subpoena if: 1. It is unreasonable or oppressive . . .”).

16 Without waiving these objections, Dignity Health is continuing to search for responsive  
17 documents, and will supplement this response if and when it locates them.

18 **REQUEST #7**

19 7. All documents used, considered, or relied on by Dr. Paul McHale to support  
20 his proposed testimony regarding throughput bottlenecking issues that cause  
21 patient holds on a regular basis in the CRMC and MGMC Emergency  
22 Departments.

23  
24 **Response by Dignity Health:** Dignity Health objects to this request because the phrase “used,  
25 considered, or relied on” is vague, ambiguous, uncertain, and unworkably broad. It is not clear,  
26 for example, whether these terms would require the production of any documents Dr. McHale

1 has ever seen that might have some conceivable relationship to his potential testimony. *See*  
2 Ariz. Admin. Code § R2-19-113(E) (“The administrative law judge shall quash or modify the  
3 subpoena if: 1. It is unreasonable or oppressive . . .”).

4 Dignity Health further objects on the basis that Dr. McHale is not an employee of  
5 Dignity Health. Dignity Health has no legal ability to direct Dr. McHale to produce any  
6 documents.

7 **REQUEST #8**

8 8. All documents for the period January 1, 2015, to the present, reflecting all  
9 interfacility transports requested by Dignity Health from all of their facilities in  
10 Maricopa County (including the facility requesting the transport; the  
11 ambulance company the request was made to; the time the transport was  
12 requested by Dignity Health; the time that the transport was scheduled to  
13 occur; the negotiated pick up time, if any; the time the ambulance actually  
14 arrived; the time the ambulance departed the facility with the patient; and the  
15 destination of the patient transport.)

16 **Response by Dignity Health:** In response to this request, Dignity Health has produced  
17 Dignity/CON000142-1529 and Dignity/CON000093-102.

18 **REQUEST #9**

19 9. All documents for the period January 1, 2015, to the present, reflecting  
20 interfacility transports that Dignity Health requested, the payment for which  
21 was guaranteed by Dignity Health, as opposed to those the patient was required  
22 to pay, including the dollar amount Dignity Health paid for those transports.

23 **Response by Dignity Health:** Dignity Health objects to this request based on lack of relevance  
24 and undue burden. *See* Ariz. Admin. Code § R2-19-113(E) (“The administrative law judge  
25 shall quash or modify the subpoena if: 1. It is unreasonable or oppressive . . .”). In order to  
26 locate the responsive documents, Dignity Health personnel would need to manually search for  
all invoices from any ambulance provider for a period of three and a half years. That would

1 require a substantial amount of personnel time and effort. And Dignity Health does not believe  
2 that effort would be justified, in light of the lack of any apparent relevance to the issues in the  
3 CON proceeding.

4 Dignity Health also objects on the basis that the requested materials are also obtainable  
5 from parties to this proceeding (which Dignity Health is not). *See* Ariz. Admin. Code § R2-19-  
6 113(E) (“The administrative law judge shall quash or modify the subpoena if: . . . 2. The  
7 desired testimony or evidence may be obtained by an alternative method.”). All ground  
8 ambulance transports that Dignity Health has requested since January 1, 2015, would have  
9 been provided by one of the intervenors in this proceeding, including Maricopa Ambulance.  
10 Those intervenors, including Maricopa Ambulance, are the better and more efficient source of  
11 the requested materials.

12 **REQUEST #10**

13 10. A copy (or a list) of all written complaints or lawsuits lodged with any state  
14 agency or regulatory body overseeing ambulance operations or filed in a court  
15 of law against Applicant or Dignity Health in Nevada or Arizona from January  
16 1, 2015, to the present.

17  
18 **Response by Dignity Health:** Dignity Health objects to this request based on lack of relevance  
19 and undue burden. *See* Ariz. Admin. Code § R2-19-113(E) (“The administrative law judge  
20 shall quash or modify the subpoena if: 1. It is unreasonable or oppressive . . .”). To the extent  
21 this request seeks “all written complaints or lawsuits lodged with any state agency or  
22 regulatory body overseeing ambulance operations . . . in Nevada or Arizona,” then Maricopa  
23 Ambulance should make that request to Community Ambulance, which is party to this  
24 proceeding. To the extent this request seeks “all written complaints or lawsuits . . . filed in a  
25 court of law against Applicant or Dignity Health in Nevada or Arizona,” that is nothing more  
26 than a fishing expedition. Dignity Health is a large health system. Like all health systems it

1 deals with litigation covering a wide variety of issues, from potential medical malpractice to  
2 commercial disputes. Requiring Dignity Health to provide all complaints (or even a list of  
3 those complaints) filed against it in two different states over a period of three and a half years  
4 would impose an oppressive burden on Dignity Health personnel. That burden would not be  
5 justified because this request is not limited in any way to matters that might be relevant to this  
6 case.

7 Dignity Health also objects based on the fact that this information may be obtained by  
8 an alternative method. *See* Ariz. Admin. Code § R2-19-113(E) (“The administrative law judge  
9 shall quash or modify the subpoena if: . . .2. The desired testimony or evidence may be  
10 obtained by an alternative method.”). All lawsuits filed against Dignity Health are matters of  
11 public record. Maricopa Ambulance can obtain those court filings itself.

12 DATED this 25<sup>th</sup> day of July, 2018.

13 COPPERSMITH BROCKELMAN PLC

14  
15 By: /s/ Scott M. Bennett  
16 Andrew S. Gordon  
17 John C. Kelly  
18 Scott M. Bennett  
19 *Attorneys for Dignity Health*

20 ORIGINAL filed this 25<sup>th</sup> day of July, 2018, via the OAH electronic document filing  
21 system (<https://portal.azoah.com/oedf>, with copies served on all parties on the approved  
22 mailing list by posting through the designated OAH website at  
<https://portal.azoah.com/oedf/documents/2017-EMS-DHS/index.html>, pursuant to Case  
23 Management Order No. 1.  
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25  
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