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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 AMR CON HOLDERS**  
15 )  
16 )

17 Dignity Health objects and responds to the subpoena *duces tecum* issued at the request  
18 of the AMR CON Holders as follows. In accordance with Ariz. Admin. Code § R2-19-113(E),  
19 Dignity Health requests that the ALJ quash or modify the subpoena to limit it to the requests  
20 and portions of requests to which Dignity Health has not objected.

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

1 **REQUEST #1**

2 1. Records and/or data sufficient to identify all current Dignity Health  
3 affiliated healthcare entities in Maricopa County, including these facilities'  
4 locations.  
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6 **Response by Dignity Health:** Dignity Health objects to this request because the phrase  
7 "Dignity Health affiliated healthcare entities" is vague, ambiguous, and uncertain. Dignity  
8 Health is a large healthcare system with a variety of different types of interests in and  
9 arrangements with health care providers in Maricopa County, ranging from acute-care  
10 hospitals freestanding emergency rooms to urgent care centers to physician practices.

11 Without waiving this objection, Dignity Health has produced a map that shows all the  
12 hospitals, urgent care facilities, and freestanding emergency departments within Maricopa  
13 County that, at the time of this response, were wholly or partially owned by Dignity Health.  
14 Dignity/CON000141.  
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1 **REQUEST #2**

2           2. Records and/or data sufficient to identify all Dignity Health affiliated  
3 healthcare entities, including each such entity's location, that You (note  
4 definition above) anticipate may be present in Maricopa County at any time  
5 during Community Ambulance's anticipated first year of Maricopa County  
6 operations, and at any time during its expected second or third year of  
7 operations. Note each and every record that relates to this is not requested, only  
8 records sufficient to identify the specific entities, their locations, and the  
9 approximate date that they are expected to be affiliated and/or operational.  
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13 **Response by Dignity Health:** Dignity Health objects to the extent this request would require  
14 the disclosure of any information about potential arrangements or facilities that has not been  
15 publicly announced. That nonpublic information is confidential and proprietary, and constitutes  
16 a trade secret under Arizona law. See A.R.S. § 44-401(4) (defining "trade secret" as  
17 "information, including a formula, pattern, compilation, program, device, method, technique or  
18 process, that both: (a) Derives independent economic value, actual or potential, from not being  
19 generally known to, and not being readily ascertainable by proper means by, other persons who  
20 can obtain economic value from its disclosure or use. (b) Is the subject of efforts that are  
21 reasonable under the circumstances to maintain its secrecy.").

22           Without waiving this objection, Dignity Health is willing to provide the following  
23 information about two planned facilities, which have been publicly announced:

- 24
- 25 • Arizona General Hospital Mesa Campus. Elliot and Ellsworth Roads. The facility is  
26 up, but does not yet have an estimated opening date.

- 1           • Women’s and Children’s Hospital. Partnership with Phoenix Children’s Hospital,  
2           which will be located on the campus of Gilbert Mercy Medical Center. This facility  
3           is expected to open in March of 2021.

3    **REQUEST #3**

4           3.     All records and/or data that relate to any calculations (actual or  
5           estimated) You (note definition above) have done as to Dignity Health affiliated  
6           entities’ need for interfacility transport services in Maricopa County, both  
7           currently and at any and all points in the future.

9    **Response by Dignity Health:** Please see the CON application of Community Ambulance,  
10   specifically including the *pro forma* ARCR that was included in that application. In addition,  
11   Dignity Health has produced reports provided by AMR that reflect the volume of interfacility  
12   transports from Dignity Health facilities. Dignity/CON000142-1529.

14   **REQUEST #4**

15           4.     Records and/or data sufficient to identify the number of patient  
16           transports originating from Dignity Health affiliated facilities located in  
17           Maricopa County, done by ambulance during 2016, during 2017, and done (to  
18           date) during 2018.

1 **Response by Dignity Health:** Dignity Health has produced reports provided by AMR that  
2 reflect the volume of interfacility transports from Dignity Health facilities.  
3 Dignity/CON000142-1529.

4 **REQUEST #5**

5 5. Records and/or data sufficient to identify the number of patient  
6 transports originating from Dignity Health affiliated facilities located in  
7 Maricopa County where the patient was moved to another health care facility by  
8 non-ambulance transport (such as personal vehicle, Uber, taxi, non-ambulance  
9 medical transport or public transportation), done during 2016, during 2017 and  
10 done (to date) during 2018.  
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13 **Response by Dignity Health:** Dignity Health objects on the basis of relevance and undue  
14 burden. *See* Ariz. Admin. Code § R2-19-113(E) (“The administrative law judge shall quash or  
15 modify the subpoena if: 1. It is unreasonable or oppressive, or 2. The desired testimony or  
16 evidence may be obtained by an alternative method.”). Non-ambulance transports have no  
17 bearing on the issues in this CON proceeding. In addition, Dignity Health does not keep  
18 records of non-ambulance transports of patients, and trying to locate any potentially responsive  
19 documents would be excessively burdensome.

20 Without waiving these objections, Dignity Health is not currently aware of any  
21 responsive documents.  
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1 **REQUEST #6**

2           6. Records and/or data sufficient to identify any and all Maricopa  
3 County Dignity Health affiliated entities' policies/rules/guidelines/checklists  
4 and/or similar documentation relating to the transfer of a patient seen at one  
5 Dignity Health affiliated facility who is then admitted to a second Dignity Health  
6 affiliated facility, with specific regard to the method of transport that will be  
7 allowed and/or utilized. Please note this request is limited to  
8 policies/rules/guidelines/checklists, etc. in existence during calendar years 2016 -  
9 2018.  
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1 **Response by Dignity Health:** In response to this request, Dignity Health has produced its  
2 policies relating to ambulance transportation. Dignity/CON001530-1574.

3 **REQUEST #7**

4 7. All records and/or data relating in any way to the attached  
5 September 14, 2017 letter from Arizona General Hospital (which has been  
6 identified in this matter as ADHS Ex. 22), including but not limited to the  
7 formation of that letter and all information provided by You to Arizona General  
8 Hospital's representatives and/or employees in connection with Community  
9 Ambulance's CON application and/or the attached letter. This item includes but  
10 is not limited to records/data that specifically relate to any statements in that  
11 letter that might be intended to refer directly to any of the AMR CON Holders.  
12 Please note, in the event it is necessary to redact patient identifying information  
13 from these records prior to production, information sufficient to allow the AMR  
14 CON Holders to crosscheck their own data base with regard to any specifically  
15 identified request for transport or transport events should be provided.  
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20 **Response by Dignity Health:** Dignity Health objects on the basis of relevance and undue  
21 burden. *See* Ariz. Admin. Code § R2-19-113(E) (“The administrative law judge shall quash or  
22 modify the subpoena if: 1. It is unreasonable or oppressive, or 2. The desired testimony or  
23 evidence may be obtained by an alternative method.”). The incredibly broad scope of the  
24 request (“All records and/or data relating in any way to the attached . . . letter”) would make it  
25 impossible for Dignity Health to identify all responsive materials, and even the effort would  
26 impose an undue burden on Dignity Health, which is not a party to this proceeding.

1 Dignity Health further objects to the extent this request seeks information covered by  
2 the attorney-client privilege and work-product doctrine. Any draft letters that were part of  
3 communications between Dignity Health personnel and any in-house or outside attorney for  
4 Dignity Health are privileged. Any draft letters that were prepared but not sent to the letter  
5 writer/signers are work product. Similarly, any communications regarding draft letters within  
6 or among Dignity Health, Community Ambulance, and any consultants or agents are work  
7 product. Any draft letters that were actually sent to the writer/signers, along with the  
8 accompanying email, are not covered by the privilege or work product, and Dignity Health  
9 has produced those it has been able to locate. *See* Dignity/CON000103-108.

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

11 COPPERSMITH BROCKELMAN PLC  
12

13 By: /s/ Scott M. Bennett

14 Andrew S. Gordon

15 John C. Kelly

16 Scott M. Bennett

*Attorneys for Dignity Health*

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