

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
6 jkelly@cblawyers.com
7 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 ABC AMBULANCE**
15)
16)

17 Dignity Health responds and objects to the subpoena *duces tecum* issued at the request
18 of ABC Ambulance 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.

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2 **REQUEST #1**

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4 1. All documents produced by Applicant and Dignity Health in response to any
5 subpoena duces tecum issued by any Intervenor or by ADHS in this administrative proceeding.

6 **Response by Dignity Health:** Dignity Health has provided ABC’s counsel with copies of
7 Dignity Health’s responses to all other subpoenas in this matter, along with the documents
8 produced with those responses.

9 **REQUEST #2**

10 2. All pleadings and filings of record in case no. A-12-664477-C, filed on June 29,
11 2012 in the 8th Judicial District, Clark County, Nevada, by Dr. Mark Ferdowsian against *inter*
12 *alia* Dignity Health and RBR Management LLC.

13 **Response by Dignity Health:** Dignity Health objects to this request on the grounds that it is
14 unreasonable or oppressive. *See* Ariz. Admin. Code § R2-19-113(E) (“The administrative law
15 judge shall quash or modify the subpoena if: 1. It is unreasonable or oppressive . . .”). A
16 lawsuit filed in 2012 in Nevada has no bearing on the issues in this CON proceeding. It
17 would impose an undue burden on Dignity Health to require it to try to locate and produce
18 the documents from that out-of-state litigation. That is particularly true because Dignity
19 Health is not even a party to this CON proceeding. Indeed, ABC has made the same request
20 in its subpoena to Community Ambulance (request No. 2 in ABC’s subpoena to Community
21 Ambulance).

1 Dignity Health also objects to this request on the basis that the desired evidence may
2 be obtained by an alternative method. *See* Ariz. Admin. Code § R2-19-113(E) (“The
3 administrative law judge shall quash or modify the subpoena if: 2. The desired testimony
4 or evidence may be obtained by an alternative method.”). ABC can obtain the documents by
5 an alternative method. The pleadings and filings in that lawsuit are public records, so ABC
6 can obtain them itself.

7 **REQUEST #3**

8 3. Any and all contracts, agreements, partnership documents, memoranda of
9 understanding and corporate documents between Applicant and Dignity Health in Nevada and
10 Arizona, including but not limited to an interfacility transport services agreement and joint
11 venture partnership agreement.

12 **Response by Dignity Health:** Dignity Health objects to this request to the extent it seeks
13 “partnership documents . . . and corporate documents between Applicant and Dignity Health in
14 Nevada and Arizona.” In that context, the phrases “partnership documents” and “corporate
15 documents” are vague, ambiguous, and uncertain. For example, it is unclear what exactly
16 “corporate documents” between two legal entities might include.

17 Without waiving this objection, Dignity Health has produced the operating agreement of
18 Community Ambulance, which is the legal document that explains the interest and role of
19 Dignity Health in connection with Community Ambulance. Dignity/AMR000265-322.

20 Dignity Health also objects to the extent this request seeks all “contracts” or
21 “agreements” between Community Ambulance and Dignity Health in Nevada. Various Dignity
22 Health facilities in Nevada have contracts with Community Ambulance for ambulance
23 services. Those contracts have no bearing on the issues in this CON proceeding, and requiring
24 Dignity Health to locate and produce all of those contracts would impose an undue burden.

25 Without waiving this objection, Dignity Health has produced its contract with Community
26 Ambulance for ambulance service in Arizona. Dignity/AMR000568-580.

1 Finally, Dignity Health objects because ABC can obtain the requested documents from
2 an alternative source. *See* Ariz. Admin. Code § R2-19-113(E) (“The administrative law judge
3 shall quash or modify the subpoena if: . . . 2. The desired testimony or evidence may be
4 obtained by an alternative method.”). ABC can obtain these materials from Community
5 Ambulance, which, unlike Dignity Health, is a party to this proceeding. Indeed, ABC has made
6 the identical request in its subpoena to Community Ambulance (request No. 3 in ABC’s
7 subpoena to Community Ambulance).

8 Without waiving these objections, Dignity Health has also produced additional,
9 potentially responsive documents. AMR Disclosure000001-5.

10 **REQUEST #4**

11 4. Corporate documents of Dignity Health, identifying the exact entity that has an
12 ownership interest in Applicant, and identifying the owners/members of that entity, and
13 documents reflecting how that entity relates to the "Dignity Health" affiliates that own the
14 proposed future customers of Applicant in Arizona, and the "Dignity Health" that has its
15 headquarters in San Francisco.

16 **Response by Dignity Health:** Dignity Health objects to this request because the phrases
17 “Dignity Health’ affiliates” and “proposed future customers” are vague, ambiguous, and
18 uncertain. Without waiving these objections, Dignity Health has produced:

- 19 • Its articles of incorporation and bylaws (Dignity/CON000001-85), which explain the
20 nature of Dignity Health as a legal entity;
- 21 • The operating agreement of Community Ambulance (Dignity/AMR000265-322),
22 which explains Dignity Health’s interest and role in Community Ambulance; and
- 23 • The bill of sale that reflects Dignity Health’s ownership interest in Adeptus entities.
24 Dignity/CON000086-92.

1 **REQUEST #5**

2 5. Documents evidencing Dignity Health's 50.1% membership interest in Applicant,
3 as well as the percentage owned by other members in Applicant.

4 **Response by Dignity Health:** In response to this request, Dignity Health has produced the
5 Community Ambulance operating agreement (Dignity/AMR000265-322), which explains the
6 ownership interests of all members of Community Ambulance.
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8 **REQUEST #6**

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10 6. Documents evidencing Dignity Health's business plans and/or intentions to acquire
11 an ownership interest in, or to create, Applicant in Nevada and/or Arizona. This includes any
12 board meeting minutes, and PowerPoint or other presentations delivered to any Dignity Health
entity regarding the purchase or acquisition of an interest in Applicant.

13 **Response by Dignity Health:** Dignity Health objects to this request on the grounds of
14 relevance and undue burden. *See* Ariz. Admin. Code § R2-19-113(E) (“The administrative law
15 judge shall quash or modify the subpoena if: 1. It is unreasonable or oppressive). Dignity
16 Health obtained an interest in Community Ambulance when that entity was formed more than
17 eight years ago, in Nevada. The documents relating to Dignity Health’s involvement in
18 establishing Community Ambulance nearly a decade ago in another state have no bearing on
19 the issues in this CON proceeding. In addition, the Dignity Health personnel who were
20 primarily involved in the establishment of Community Ambulance are no longer with Dignity
21 Health. It would impose an undue burden on Dignity Health’s current personnel to try to locate
22 and produce documents relating to the establishment of Community Ambulance.
23

24 Without waiving these objections, Dignity Health has produced the operating agreement
25 for Community Ambulance (Dignity/AMR000265-322), which explains Dignity Health’s
26 interest and role in that entity.

1 **REQUEST #7**

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3 7. Documents evidencing the "success" of the partnership between Dignity Health
4 and Applicant in Nevada.

5 **Response by Dignity Health:** Dignity Health objects to this request because the term
6 "success" is vague, ambiguous, and uncertain.

7 Dignity Health further objects because the requested documents may be obtained by an
8 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."). Community Ambulance is a party to the CON
11 proceeding, and is the more appropriate source of information about its "success" in Nevada.
12 Indeed, ABC has made an identical request to Community Ambulance (ABC's request No. 9 to
13 Community Ambulance).

14 **REQUEST #8**

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16 8. Documents evidencing any alleged substandard performance by ABC Ambulance.

17 **Response by Dignity Health:** Dignity Health is not currently aware of any responsive
18 documents.

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20 **REQUEST #9**

21 9. Documents evidencing Dignity Health's plans to provide services, through
22 Applicant, to remote or rural Maricopa County communities.

23 **Response by Dignity Health:** Dignity Health objects to this request on the grounds of
24 relevance and undue burden. See Ariz. Admin. Code § R2-19-113(E) ("The administrative law
25 judge shall quash or modify the subpoena if: 1. It is unreasonable or oppressive . . ."). To the
26 extent this request seeks information about non-ambulance health care services by Dignity

1 Health, that information has no bearing on the issues in this CON proceeding, and requiring
2 Dignity Health to identify and produce that information would be unreasonable and oppressive.

3 Dignity Health also objects because ABC can obtain this evidence by an alternative
4 method. *See* Ariz. Admin. Code § R2-19-113(E) (“The administrative law judge shall quash or
5 modify the subpoena if: . . . 2. The desired testimony or evidence may be obtained by an
6 alternative method.”). To the extent this request seeks information about ambulance services,
7 Community Ambulance is a party to this CON proceeding, and is the more appropriate source
8 of information regarding Community Ambulance’s plans for providing ambulance service to
9 remote or rural communities.

10 Without waiving these objections, Dignity Health is not currently aware of any
11 responsive documents.

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13 **REQUEST #10**

14 10. Any and all current business plans and/or financial forecasts or projections
15 prepared by or on behalf of Dignity Health pertaining to Applicant, for both Applicant's Nevada
16 operations and proposed Arizona operations, and any drafts thereof.

17 **Response by Dignity Health:** Aside from the *pro forma* ARCR included in Community
18 Ambulance’s CON application, Dignity Health is not currently aware of any responsive
19 documents.

20 **REQUEST #11**

21 11. Documents evidencing Dignity Health's communications with ABC Ambulance
22 regarding ambulance services in Arizona, and any experiences Dignity Health has had with ABC
23 Ambulance.

24 **Response by Dignity Health:** Dignity Health objects because ABC can obtain this
25 evidence by an alternative method. *See* Ariz. Admin. Code § R2-19-113(E) (“The
26 administrative law judge shall quash or modify the subpoena if: . . . 2. The desired testimony or

1 evidence may be obtained by an alternative method.”). ABC Ambulance would have any
2 written communications with Dignity Health, and can access and produce those documents just
3 as easily as Dignity Health.

4 Without waiving this objection, Dignity Health is not currently aware of any responsive
5 documents.

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7 **REQUEST #12**

8 12. Documents evidencing any attempts by Dignity Health to reach out to any
9 potential customer in Maricopa County that is not owned by, or affiliated with, Dignity Health.

10 **Response by Dignity Health:** Dignity Health objects to this request because the phrases
11 “reach out to” and “any potential customer” are vague, ambiguous, and uncertain. The request
12 does not indicate, for example, the meaning of “reach out to;” does not put any limits on the
13 scope of the reaching out; and does not specify what items or services a “potential customer”
14 might be a potential customer for. Dignity Health is a large hospital system that provides a
15 wide variety of health care services, so the use of the phrase “potential customer” with respect
16 to Dignity Health is unclear.

17 To the extent this request refers to any communications regarding non-ambulance
18 services, Dignity Health objects on the grounds of relevance and undue burden. *See* Ariz.
19 Admin. Code § R2-19-113(E) (“The administrative law judge shall quash or modify the
20 subpoena if: 1. It is unreasonable or oppressive . . .”).

21
22 **REQUEST #13**

23 13. Documents evidencing any attempts Dignity Health has made to engage the
24 services of ABC Ambulance.

25 **Response by Dignity Health:** Dignity Health objects because ABC can obtain this evidence
26 by an alternative method. *See* Ariz. Admin. Code § R2-19-113(E) (“The administrative law

1 judge shall quash or modify the subpoena if: . . . 2. The desired testimony or evidence may be
2 obtained by an alternative method.”). ABC Ambulance would have any written
3 communications with Dignity Health, and can access and produce those documents just as
4 easily as Dignity Health.

5 Without waiving this object, Dignity Health is not currently aware of any responsive
6 documents.

7
8 **REQUEST #14**

9 14. Documents evidencing Dignity Health's financial, staffing, and other commitments
10 to Applicant to support Applicant's proposed operation in Arizona.

11 **Response by Dignity Health:** Dignity Health objects on the ground that the phrase “financial,
12 staff, and other commitments” and the term “support” are vague, ambiguous, and uncertain.

13 Without waiving these objections, Dignity Health is not currently aware of any
14 responsive documents.

15
16 **REQUEST #15**

17 15. Documents evidencing any "negative patient experiences" at ABC.

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20 **Response by Dignity Health:** Dignity Health is not currently aware of any responsive
21 documents.

1 **REQUEST #16**

2 16. Documents supporting Your claims that Your facilities have experienced
3 "interfacility ambulance transport issues."

4 **Response by Dignity Health:** Dignity Health objects to this request on the basis that the
5 phrase "Your claims" is vague, ambiguous, and uncertain.

6 Without waiving this objection, Dignity Health has produced Dignity/AMR000001-580;
7 Dignity/CON002437-2469; Dignity/CON000093-102.
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9 **REQUEST #17**

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11 17. Copies of any and all drafts in Your possession (even if You were simply copied
12 on an email containing such draft) of any letters of support submitted by Applicant as an exhibit
13 to be used in these proceedings, including any emails to which such drafts were attached.

14 **Response by Dignity Health:** Dignity Health objects to the extent this request seeks
15 information covered by the attorney-client privilege and work-product doctrine. Any draft
16 letters that were part of communications between Dignity Health personnel and any in-house
17 or outside attorney for Dignity Health are privileged. Any draft letters that were prepared but
18 not sent to the letter writer/signers are work product. Similarly, any communications regarding
19 draft letters within or among Dignity Health, Community Ambulance, and any consultants or
20 agents are work product. Any draft letters that were actually sent to the writer/signers, along
21 with the accompanying email, are not covered by the privilege or work product, and Dignity
22 Health has produced those it has been able to locate. Dignity/CON000103-108.
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1 **REQUEST #18**

2 18. Documents evidencing any written performance measures or standards which You
3 expected from, and imposed upon, any interfacility transport service provider, including AMR,
4 in Arizona.

5 **Response by Dignity Health:** In response to this request, Dignity Health has produced.
6 Dignity/AMR000001-580; Dignity/CON000109-140.

7 DATED this 25th day of July, 2018.

8 COPPERSMITH BROCKELMAN PLC

9
10 By: /s/ Scott M. Bennett

11 Andrew S. Gordon

12 John C. Kelly

13 Scott M. Bennett

Attorneys for Dignity Health

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