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14 BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

15 In the Matter of: )

16 **RBR Management LLC, dba Community** )  
17 **Ambulance** )

18 Applicant. )

19 Docket 2017-EMS-0104-DHS  
(EMS No. 0283)

20 **AMR CON HOLDERS' RESPONSE**  
21 **TO APPLICANT'S OBJECTIONS**  
22 **TO THE SUBPOENA DUCES**  
23 **TECUM ISSUED AT THE REQUEST**  
24 **OF THE AMR CON HOLDERS**

25 (Assigned: The Hon. Tammy  
26 Eigenheer)

27 The AMR CON Holders, Intervenors herein, pursuant to the parties' stipulated  
28 deadlines, and (contingently) pursuant to AAC R2-19-106(d) hereby submit their  
29 response to the "Applicant's Objections to AMR CON Holders' Subpoena Duces  
30 Tecum ("SDT") . . ." While the Applicant has only objected to that SDT, rather than  
31 seeking any affirmative ruling (such as an order quashing the SDT in whole or in

1 part) from this Office<sup>1</sup>, out of an abundance of caution – and in the event this Office  
2 intends to construe the “Objections” as a motion requesting affirmative relief, these  
3 Intervenors hereby submit their response.

4 With the exception of SDT 3, the Applicant has objected in whole or in part to  
5 every single one of the SDT items. Because the AMR CON Holders carefully crafted  
6 the requested SDT to track affirmative representations made by Applicant  
7 RBR/Community Ambulance in its CON Application and the affirmative  
8 representations it made when doing its initial witness disclosures as to the testimony  
9 it intends to elicit in support of said Application, there are two general conclusions  
10 that may be reached from the Applicant’s Objections:

11 1. In furtherance of the ambulance transport operations forming the basis  
12 for its Application for a Maricopa County-wide interfacility (“IFT”)/convalescent  
13 transport Certificate of Necessity (“CON”), RBR/Community Ambulance did little  
14 more than rely upon the simple number of transports reported by the AMR CON  
15 Holders to Dignity Health in their 2016 first quarter report; or

16 2. RBR/Community Ambulance has made inquiries, investigations,  
17 calculations, business plans, and other normal business strategy type of inquiries  
18 and projections for its proposed Maricopa County operations but is refusing to  
19 disclose these despite the fact that the pending hearing is designed to inquire into  
20 essential topics such as whether the proposed operations are supported by public  
21 necessity [A.R.S. §36-2233(B)(2)] and are in the public’s best interest (impact on  
22 public) [AAC R9-25-903(A)(4)], what the impact of the Applicant’s proposed  
23 operations will be on wilderness and rural service/populations (Notice of Hearing, p.  
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25 <sup>1</sup> Pursuant to R2-19-106(A), any party requesting a ruling from an administrative  
26 law judge is to file a motion, including (by example) a request to have a  
subpoena quashed.

1 2), and what the financial impact of the Applicant's proposed operations will be on  
2 existing providers (and the public they serve)[AAC R9-25-903(B)(2)].

3 RBR/Community's responses to the SDT provide little more than a  
4 regurgitation of their application package, eight letters of support their consultants  
5 wrote for various entities and historic ARCR filings by Maricopa County's existing  
6 CON holders. Almost nothing other than this general information, most of which is  
7 already part of the exhibits filed in this matter, has been provided in response to the  
8 AMR CON Holders' very specific SDT items, most of which are directed at affirmative  
9 statements contained in RBR's Application or in its statements of its intended witness  
10 testimonies. On the other hand, RBR's objections to SDT production are copious,  
11 albeit often unaccompanied by any meaningful discussion justifying the objections  
12 made.

13 This response is supported by the following Memorandum of Points and  
14 Authorities, as well as all matters of record – specifically including the background  
15 discussion found in the AMR CON Holders' July 25, 2018 Motion to  
16 Quash/Objections to RBR's SDT, beginning at p. 5, all of which are incorporated by  
17 this reference herein. For the reasons stated below, to the extent that the Applicant  
18 does have responsive information, it should be required to comply with the SDT.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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3 **I. The AMR CON Holders’ Request for Issuance of a SDT Directed at the**  
4 **Applicant (Filed May 10, 2018) Included Justification Detail, Which the**  
5 **Applicant has Either Disregarded or is Trying to Avoid**

6 The important issues this Office will consider during the course of the hearing  
7 include that of whether “public necessity” supports the applied for CON, whether the  
8 proposed services would be in the public’s best interest, the impact an order granting  
9 the CON might have on existing CON holders (including the AMR CON Holders), and  
10 the impact on ambulance transport services provided in rural and/or wilderness  
11 areas. In requesting issuance of a SDT directed at Applicant, the AMR CON Holders  
12 discussed how the Applicant’s initial witness disclosure addressed important subjects  
13 associated with these items by providing topics of witness testimony, and how more  
14 specifics regarding these important topics (which one would presume an applicant for  
15 a CON would have fleshed out by this stage of the proceedings) is necessary to the  
16 AMR CON Holders appropriate preparation for the hearing. See, May 10, 2019  
17 “AMR CON Holder’s Request for Issuance ...”, (“Request”), beginning at p. 3. This  
18 discussion then itemized which of the SDT items were directed at information relating  
19 to the “public necessity” statements that had been made in RBR’s initial Application  
20 (SDT items 1 – 4), discussed how SDT items 5 and 29 relate to any potential  
21 allegations of substandard service/performance the Applicant might be intending to  
22 raise, and noted that SDT item 15 was also intended to obtain information about the  
23 proposed necessity of supporting the Dignity organization with an additional IFT  
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1 provider. *Id.*, p. 4. The AMR CON Holders identified SDT items 6 – 28 as relating to  
2 the fact finding this Office must perform, including requests for information related to  
3 certain letters of support the Applicant solicited (SDT items 25- 28), specific  
4 information relating to Applicant’s proposed operations (SDT items 6 – 16, 16 - 21),  
5 and information relating to potential impact upon rural/wilderness areas (SDT items  
6 22 – 24). *See, id.*, p. 4. The AMR CON Holders also discussed the fact that SDT  
7 items 29 – 34 are intended to obtain information and backup data relating to the  
8 Applicant’s proposed witness testimonies, where those included subject matter of  
9 testimony rather than a fair summary of expected testimony. *Id.*, p. 5. However, in  
10 RBR/Community Ambulance’s objection, it does not address any of these  
11 justifications or topics. Rather than presenting itself as an applicant ready, able, and  
12 willing to detail its proposed operational plans so that DHS and the existing CON  
13 holders might be able to fairly calculate (or at least estimate) the impact of RBR  
14 receiving a CON, not just during its first “ramp-up” year, but continuing into its second  
15 and third year of operations, and rather than providing candid information regarding  
16 the information it and its consultants provided to those entities writing letters of  
17 support or to those non-employee individuals it expects to call as witnesses on such  
18 important topics as financial impact, RBR’s objections appear calculated to obfuscate  
19 and block access to the facts it intends to proceed upon.  
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1 **II. RBR/Community Ambulance’s “Work Product” Objection Cannot be**  
2 **Sustained**

3 In many of its lengthy list of objection topics, the Applicant asserts attorney-  
4 client privilege and “work product.” While the attorney-client communication privilege  
5 would properly be asserted where applicable, in order to block a response to  
6 discovery/disclosure on the grounds of “work product,” more is required than simply  
7 stating those words. Ariz.R.Civ.Pro. Rule 26 (b)(3)(A) provides that “ordinarily, a  
8 party may not discover documents and tangible things that another party or its  
9 representative . . . prepared in anticipation of litigation or for trial.” Nowhere does  
10 RBR’s objection explain how the information responsive to the SDT items it has  
11 asserted “work product” in response to were prepared in anticipation of litigation or  
12 for a trial. That would seem to be its preliminary burden. For example, SDT item 25  
13 requires production of records/data relating to RBR’s CON Application that were  
14 provided to any person who is not an employee of Community Ambulance, and  
15 whom RBR has listed as a potential witness (or whom it might list as a potential  
16 witness). RBR has not identified any of its attorneys as witnesses. Non-employees  
17 appear to be limited to hired experts, Dignity Health employees, or other third parties.  
18 If RBR has provided records or data to these individuals, those records/data have  
19 been disclosed to third parties and cannot possibly be protected by the attorney-  
20 client privilege or the work product doctrine. However, both the attorney-client  
21 privilege and work product doctrine have been asserted in as bases for objections.  
22 See, Applicant’s Objections to AMR CON Holders’ SDT (hereafter “RBR’s  
23 Objection”), at pp. 19-20. Additional SDT objections based upon “work product,”  
24 without any discussion justifying application of the same and without any facts  
25 allowing the AMR CON Holders to take the next step in the “work product” analysis  
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1 (a determination of need for the information and accessibility through other means)  
2 are found in response to SDT items 25 - 28. None of these should be sustained.

3 **III. To the Extent RBR has Objected that it Cannot Respond Until it Receives**  
4 **a Response to an SDT it has Directed at the AMR CON Holders, Dignity**  
5 **Health, or Some Other Third Party, This is not a Proper Objection**

6 Pursuant to AAC R2-19-1130(E), subpoenas are to be quashed or modified if  
7 they are (1) unreasonable or oppressive, or (2) if the desired evidence may be  
8 obtained by an alternative method. Despite this, RBR's "objections" in great part  
9 include assertions that (a) the information/data required for production "ha[s] been  
10 requested through subpoenas *duces tecum* Community Ambulance directed to  
11 Intervenors and Dignity Health . . ." (for example, see, RBR Objection, Request No.  
12 1, at p. 2); (b) RBR objects to the request "as premature to the extent that documents  
13 relevant to the issues . . . have been requested through Community Ambulance's  
14 subpoenas *duces tecum* directed to AMR and Dignity Health" (*id.*, p. 4, Request No.  
15 5); or (c) similar statements. This type of "we cannot respond until we receive items  
16 we have subpoenaed" objection is made in response to at least twenty-one of the  
17 thirty-four SDT items: 1, 2, 5, 6, 9, 10, 13, 15 – 17, 19, 21 – 24, and 29 – 34.  
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20 RBR/Community Ambulance submitted its Application on June 20, 2016. The  
21 Notice of Hearing was issued on June 1, 2017, at a time when RBR presumably  
22 agreed with DHS that it was ready to proceed on its Application as presented. RBR  
23 filed its initial witness and exhibit list on April 23, 2018. It did not request issuance of  
24 any SDTs until May 10, 2018. One would expect that if it did require any SDTs to  
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1 make proper witness and exhibit disclosure, those SDTs would have been requested  
2 much earlier. The SDT items this “objection” has been made in response to are  
3 directed at affirmative statements RBR made in its June 2016 Application, as fleshed  
4 out during the Bureau’s substantive review prior to issuance of the June 2017 Notice  
5 of Hearing, and at the testimonies of RBR’s intended witnesses, as disclosed in April  
6 2018. A May 10, 2018 request for SDTs (or responses to the same) cannot be  
7 supportive of these previous affirmative representations. If RBR currently has no  
8 data, documents, or other information to back up its general statements, to show how  
9 it made the calculations contained within its Application, or to support what it has  
10 represented its expected witness testimonies will be, even at this late stage in the  
11 proceeding, it should simply say so rather than attempting to disguise that lack of  
12 supportive information with inappropriate objections. “I do not have any responsive  
13 information yet” is not one of the regulatory bases for objecting to or quashing a SDT.  
14 See, ACC R2-19-113(D). This form of an “objection” cannot serve as the basis for  
15 any affirmative orders quashing or modifying the SDT. Either the Applicant has  
16 information, and should produce it, or has simply made statements in support of its  
17 Application that it has no facts or data to backup.  
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1 **IV. The Assertion that ADHS Does Not Require the Requested Information as**  
2 **Part of a CON Application is also an Inappropriate Objection and Should**  
3 **Not be Sustained**

4 Ignoring the fact that the hearing in this matter is intended to flesh out the  
5 details regarding important topics such as whether the Applicant's proposed  
6 operations are supported by "public necessity" and what the impact of RBR's  
7 proposed operations will be upon existing CON holders and the public they serve, an  
8 "objection" RBR repeats throughout its Objection is the statement that the requested  
9 production is "not relevant because ADHS does not require [it] . . . to be submitted in  
10 support of Community Ambulance's Application for a CON," or similar language. For  
11 example, see, RBR Objection, p. 16, response to SDT item 20. This objection is  
12 found in response to ten SDT items: 8, 10, 12-15, 19-21 and 30. With specific  
13 regard to request 20, information regarding RBR's calculation of second and third  
14 years transport volume, and/or any other future years, was requested. This relates  
15 directly to the expected impact upon the AMR CON Holders, which is indeed  
16 relevant. Given the fact that RBR has not cited any applicable statute, regulation,  
17 DHS guidance document, or other relevant source (indicating public necessity  
18 factors, such as impact on existing CON holders, will be limited to those in existence  
19 during an applicant's first year of operations only) to support these objections, they  
20 should be rejected. As above, the AMR CON Holders related each of their SDT  
21 items to a specific issue relevant to the impending hearing. If RBR has nothing  
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1 responsive, it should simply say so. If it does have responsive data/information, this  
2 unsupported style of objection should not be sustained to block production.  
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4 **V. Unspecified Objections of “Burdensome” or “Unduly Burdensome”**  
5 **Should Also Not be Sustained**

6 Throughout its Objection, Applicant states the desired production is either  
7 burdensome or “unduly burdensome,” in general without providing any discussion to  
8 allow this Office or the parties to evaluate whether or not the same is true. As the  
9 moving party (to the extent this Objection is a motion), the Applicant has the burden,  
10 and should be required to provide information demonstrating why this contention is  
11 true. For this reason, the objection should not be sustained. This applies to twenty  
12 of the thirty-four SDT items: 1, 2, 6, 9, 13-16, 21-28, 30, and 32-34. In some  
13 instances, the “burdensome” objection is identified as being based upon the  
14 information being in the AMR CON Holders’ possession. To the extent that is the  
15 concern, the objection is accepted, as the AMR CON Holders are not requesting the  
16 Applicant to produce information they already have.  
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21 **VI. Individual SDT Objections are Additionally Inappropriate**

22 In addition to the above issues with the Applicant’s assertion of “work product  
23 (section II, p. 6 *supra*),” the purported need for responses to its SDT in order to  
24 respond (section III, p. 7 *supra*), the contention that the information sought is beyond  
25 the scope of documents ADHS requires as part of a CON application (section IV, p. 9  
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1 *supra*), and the “unduly burdensome” objection (section V, p. 10 *supra*), the following  
2 SDT objections are further inappropriate, and production should be required, as  
3 follows:

4       **SDT 1 and 2.**       In the introductory statement to its Application (beginning at  
5 ADHS Ex. 1, p. 3), RBR extolled the virtues of the Dignity Health “comprehensive  
6 health care system” and proposed that because the past environment of multiple  
7 ambulance companies “providing ambulance service through competitive service has  
8 dwindled to only two ambulance providers owned by two different organizations . . .  
9 the ambulance service being provided lacks much in the way of competition of  
10 service between multiple ambulance services competing for the business by meeting  
11 the needs of Dignity Health at all of its facilities.” ADHS Ex. 1-0003 through -0004.  
12 RBR goes on to explain how Dignity has a joint venture agreement with RBR  
13 Management dba Community Ambulance in Nevada, and states that “Dignity Health  
14 desires to expand [that] partnership . . . into the Arizona market . . .” *Id.* It proposes  
15 that allowing this “competitive alternative” in Maricopa County “will further stimulate  
16 demand for improved quality and efficiency.” *Id.* This appears to be RBR’s  
17 statement submitted in support of the “public necessity” aspect of this proceeding.  
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22       As such, in SDT items 1 and 2, the AMR CON Holders requested those  
23 records/data that support the two inherent propositions here: (1) “that ADHS  
24 granting Community Ambulance a CON will increase competition for ambulance  
25 transports of patients traveling to, from, or between Dignity Health affiliated facilities”  
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1 and; (2) “that granting Community Ambulance a CON will ‘further stimulate demand  
2 for improved quality and efficiency’ in ambulance transport service . . .” See, SDT  
3 items 1 and 2, respectively. With each SDT item, the ADHS exhibit page upon which  
4 these propositions appear was specifically referenced, so that there could be no  
5 confusion. Rather than provide **any** responsive documents, or simply admitting that  
6 they have no responsive documents, RBR made a paragraph long list of objections,  
7 including those discussed at sections II and III above. Additionally, RBR objected  
8 “overly broad, vague and ambiguous.” Because each SDT item specifically  
9 referenced a page out of RBR’s Application, and quoted language out of that  
10 Application, how can RBR purport to not understand (vague and ambiguous) or  
11 contend each is “overly broad”? No explanation is offered. To the extent RBR is in  
12 possession of any responsive information, it should be required to produce that, or it  
13 should admit these statements were simply “puffery” and it had nothing to back them  
14 up when it made them to DHS in June 2016.

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18 **SDT 3.** RBR states it has no responsive documents relating to the “innovative  
19 Community Health service programs” its Application stated it intends to implement.  
20 The AMR CON Holders accept this. No action by this Office is required on item 3.

21 **SDT 4.** Likewise, RBR’s objection/response to item 4 is accepted  
22 (reference to its Application as the only supportive item). No action by this Office is  
23 required.  
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1           **SDT 5.**       In Applicant’s Initial Witness and Exhibit List, filed April 23, 2018,  
2 RBR identified a Dignity Vice President, Jeffrey O’Malley, to testify to a variety of  
3 topics including “Dignity Health’s experiences with interfacility ambulance  
4 transportation and the providers of ambulance services in the proposed service area  
5 . . .”, and “Dignity Health’s need for an additional provider of interfacility ambulance  
6 transports . . .”; RBR stated that he “may testify regarding substandard interfacility  
7 transport performance Dignity Health facilities have experienced by other CON  
8 holders in the proposed service area . . .” *Id.*, at p. 4. Another Dignity employee,  
9 Linda Hunt, was identified to testify to the subject matter of “Dignity Health’s  
10 experiences with interfacility ambulance transportation, and the providers of  
11 ambulance services in the proposed service area . . .” *Id.* A third Dignity employee,  
12 Brandon Hestand, was also disclosed as a witness, with the subject matter of his  
13 testimony including “negative patient experiences . . . and . . . interfacility ambulance  
14 transport delays . . .” *Id.*, p. 6. A fifth Dignity employee, Delores Kells, was disclosed  
15 as a witness who might testify about various subject matters including “delays the  
16 Urgent Care Centers experience in scheduling transports and in arrivals times of  
17 ambulances” and regarding “patients leaving Urgent Care Centers against medical  
18 advice to drive themselves to facilities with higher levels of care due to delayed  
19 interfacility transports.” *Id.*, pp. 6 and 7. Because these witnesses’ expected  
20 testimonies were described by subject matter only, with no specifics relating to any  
21 particular CON holder or time frame, the AMR CON Holders, in order to be  
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1 appropriately prepared for the hearing, submitted SDT 5, requesting records/data  
2 that RBR/Community is in possession of or can obtain from its affiliates (such as  
3 Dignity) “that relate in any way to allegations of ‘substandard service’ or ‘substandard  
4 performance,’ if any, that you might assert in the hearing in this matter – both  
5 generally and as such allegations might relate specifically to the AMR CON Holders.”  
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7 In response, RBR/Community made a two paragraph list of objections, and provided  
8 absolutely no responsive items other than the letters of support sent to DHS from a  
9 Dignity facility (Arizona General Hospital) and various fire chiefs (CA Exhibits 111-  
10 118).

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12           Given RBR’s affiliation with Dignity Health, its majority owner, and the fact that  
13 its Application purports to have been submitted in order to provide services to Dignity  
14 affiliated facilities, as well as the disclosed subject matters of testimonies from the  
15 above identified witnesses – which RBR obviously has the ability to confer with  
16 regarding their expected testimonies, RBR’s vehement objection is surprising. Either  
17 it was in possession of specific information regarding purported substandard  
18 service/substandard performance when it submitted its initial witness and exhibit  
19 disclosure in April 2018, or that disclosed witness testimony is baseless. Rather than  
20 making a long list of objections to what has been requested, including the statement  
21 that the item is “overly broad,” the Applicant should either state that it has no  
22 responsive documents – no documents indicating any substandard or substandard  
23 performance by the AMR CON Holders, or it should provide the specifics that it either  
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1 has or has had ample time to acquire from its majority owner and that owner's  
2 employees.

3 **SDT 6.** Pursuant to AAC R9-25-903(B)(2), the impact of the proposed  
4 CON on existing CON holders is an item the Director is to consider. Applicant's  
5 initial witness disclosure identified Michael Evans as a witness who "may also offer  
6 testimony concerning the potential financial impact on other CON holders..."  
7 Applicant's Initial Witness and Exhibit List, p. 5. As such, SDT 6 requests  
8 records/data "relating to any calculations [the Applicant and its  
9 attorneys/consultants/experts] have done as to the financial and/or operational  
10 impact on existing ambulance transport service providers . . . including calculations  
11 or information regarding the impact upon the AMR CON Holders." Other than  
12 identifying the ARCR submitted with its Application (containing anticipated number of  
13 transports and gross revenues), the Applicant provided no responsive items, instead  
14 making a series of objections including those discussed at sections III and V above.  
15 It further objects to this as "overly broad, vague and ambiguous" and not reasonably  
16 specific as it relates to the phrase "operational impact . . ." "Operational impact,"  
17 means impact upon existing CON holders' operations. How much more specific can  
18 that be? Given the "public's best interest" inquiry, R9-25-903(B)(2), and the  
19 Applicant's disclosed subject matter of expected witness testimony (as opposed to a  
20 fair summary of expected testimony) for witness Evans, these objections are  
21 inappropriate. The Applicant offers no discussion as to why its objections are well  
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1 placed. If the Applicant simply has not considered this topic, has made no  
2 calculations, has not asked its expected witnesses to make any calculations, etc., it  
3 should simply say so rather than asserting insincere and inappropriate objections. Its  
4 objections should not be sustained.

5 **SDT 7 - 21.** Part of the Applicant's response/objection to item 6 (impact) is  
6 that it is waiting for documents responsive to its SDT to the Intervenors (addressed  
7 *supra* in section III). Anticipating Applicant's position that it is the Intervenors who  
8 will have to calculate and prove impact, the AMR CON Holders submitted SDT items  
9 7 - 21: collectively, these target the information necessary for the AMR CON Holders  
10 to make their specific impact calculations, for the Director's consideration. In addition  
11 to the above discussed objection topics (sections III-IV *supra*), the objections  
12 RBR/Community has made to these SDT items are further inappropriate and should  
13 not be sustained, as follows:

- 14 - **SDT 7** (records/data sufficient to identify intended suboperation stations  
15 and volume of transports expected during first year of operations). The  
16 "vague and ambiguous" objection is inappropriate.
- 17 - **SDT 8** (same as item 7, but projections for second and third years of  
18 operations). This was submitted because what has commonly been seen in  
19 Maricopa County is that when a new provider receives a CON, there is a  
20 "ramp-up period." No one is initially able to go at 100% of the volume they  
21 eventually anticipate doing, especially during the first six to nine months.  
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1 This was AMR Maricopa's experience, it has been seen with Maricopa  
2 Ambulance, as well as with a variety of governmental entities that have  
3 recently received CONs (something DHS should be able to confirm, as do  
4 the ARCR filings Applicant has submitted as intended exhibits). The bottom  
5 line is that the real impact cannot be judged by looking at RBR's ARCR  
6 statement of expected year one transports. The real impact will not be  
7 seen until year two. RBR's objection that this is "overly broad and not  
8 relevant," must be rejected. No regulation is cited for the relevancy  
9 proposition, and R9-25-903(A)(4) and (B)(2) are not limited to impact during  
10 the first year of operations. An applicant objecting to identifying its  
11 expected suboperation stations and associated volume of transports on the  
12 grounds of "confidential, proprietary and trade secret information" flies in the  
13 face of this Office's assignment to elicit evidence regarding the Applicant's  
14 expected operations, and the Director's need to consider the same to  
15 determine whether or not the proposed operations are in the public's best  
16 interest.  
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- 20 - **SDT 9** (records/data detailing anticipated need for temporary services if  
21 RBR receives a CON, including estimates as to number of requests and  
22 associated time frames such as day of week/time of day – referencing p. 63  
23 of RBR's Application, where RBR identifies its plan for temporary service as  
24 its intent to "contact all ambulance service providers within the proposed  
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1 service area and all adjacent service area providers to request entry into  
2 Ambulance Back Up Agreements so as to guarantee continued service  
3 area coverage during periods of high utilization of resources.” ADHS 1-  
4 0063.) In other words, RBR’s plan for temporary service is to look to other  
5 existing CON holders. If an existing CON holder is not going to be regularly  
6 providing transport services to a Dignity facility, there will be no need to  
7 post an ambulance nearby that facility (in the event RBR’s CON Application  
8 is granted). As such, it will need to “pull” an ambulance from another  
9 assignment to “backup” RBR’s intended dominance of Dignity transports (if  
10 RBR is unable to provide the service its CON Application states it intends to  
11 provide). This will obviously impact existing CON holders’ operations. The  
12 total number of current Dignity affiliated facility transports (identified in the  
13 AMR CON Holders’ July 25<sup>th</sup> First Supplement to Exhibits, at AMR Ex. 18)  
14 demonstrates that RBR’s first year projections (11,315 transports per its  
15 ARCR, see ADHS 12-0004) will not cover all Dignity facility transports. As  
16 such, RBR’s operational intentions, for example if it intends to staff heavily  
17 during periods of high ambulance volume but not staff during low volume  
18 periods, if it will not staff at facilities having a limited number of transports,  
19 etc., is very meaningful to the impact analysis the AMR CON Holders desire  
20 to perform for the Director’s consideration. That is why this request was  
21 submitted. It is not “vague and ambiguous” as Applicant objects (especially  
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1 given the direct reference to the Application, by page number), it is  
2 unknown why RBR believes this is “unduly burdensome,” and from what  
3 RBR has filed thus far, including its ARCR, it appears RBR does not intend  
4 to do 100% of the Dignity affiliated transports, at least during its first year of  
5 operations. Its operational plan for doing those transports it does project is  
6 something that this Office and the Director will be considering. RBR should  
7 be required to disclose it or to state it has nothing responsive (no plan).  
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- 9 - **SDT 10** [this targeted first and second years of operations, requiring  
10 production of records/data “sufficient to specify the number of Dignity  
11 Health affiliated healthcare entity calls for ambulance transports [the  
12 Applicant and its attorney/consultants] project/anticipate not being able to  
13 respond to (that other CON holders will take) and to specify the  
14 method/procedure/criteria/other [RBR] will use to determine when this will  
15 occur and for what calls . . .” (with an example being offered). For all the  
16 above discussed reasons, this is plainly relevant to impact on existing  
17 providers (and the public). Nevertheless, RBR makes the same “overly  
18 broad, unduly burdensome, vague and ambiguous, not reasonably specific,  
19 and unintelligible” type of objections seen elsewhere, which are plainly  
20 without merit. For these reasons, as well as those detailed above at  
21 sections III – IV, the objections should be overruled and production should  
22 be required.  
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- 1 - **SDT 11** (no issues – identification of current Dignity Health affiliated  
2 healthcare entities in Maricopa).
- 3 - **SDT 12.** In addition to needing identification of current Dignity Health  
4 affiliated entities, since this affiliation is not always apparent, given the  
5 nature of RBR’s Application as targeting **all** Dignity transports, the AMR  
6 CON Holders require information regarding what Dignity Health affiliated  
7 healthcare entities are anticipated to become present during RBR’s first  
8 through third years of operations. This is what SDT 12 targeted, together  
9 with the approximate date those anticipated facilities are expected to be  
10 affiliated and/or operational. If this information is unknown, the response is  
11 simple: “nothing responsive.” However, the “not required by DHS” objection  
12 discussed above at section IV should be rejected. It is also not the  
13 Applicant’s place to assert a “proprietary/confidential/trade secret” objection  
14 upon Dignity Health’s behalf. It should simply be required to produce any  
15 information it has responsive to this. If the Applicant is aware of plans for  
16 new Dignity affiliated facilities that are in the process of being made part of  
17 the Maricopa County system, it should be required to disclose this  
18 information as relevant to impact. If it has no responsive information, it  
19 should not burden this Office and the AMR CON Holders with these  
20 objections.  
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1 - **SDTs 13 and 14** (production of records/data relating to projected operation  
2 plans to, from, or between Dignity facilities, for first and second years of  
3 operations, and precisely what facilities RBR intends to service during its  
4 first, second and third year of operations.) As noted above, the number of  
5 transports in RBR's projected ARCR is insufficient to cover all Dignity  
6 affiliated facility transports, as is the staffing model evident through its  
7 ARCR. Rather than providing the responsive information (which would  
8 allow the AMR CON Holders to determine what facilities RBR will not  
9 service, what hours it will staff most heavily, and other essential information  
10 to determine which of the Dignity facility, when and for how many transports  
11 RBR intends to respond to), RBR again objects and provides no responsive  
12 documentation. In addition to the objections discussed above at sections  
13 III- V, the other objections made here are also without merit. How can this  
14 be overly broad, vague and ambiguous? How can the proposed second  
15 year of operations not be relevant to an impact determination? How can an  
16 applicant for a CON contend it is not required to disclose its operations plan  
17 on the grounds of "confidential, proprietary, and trade secret information"?  
18 No explanation is given by RBR, it just makes perfunctory statements of  
19 type of objection. If RBR has any responsive information, it should be  
20 required to produce it. If it has not thought about its first, second and third  
21 year operations as those relate to numbers of transports involving Dignity  
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1 facilities, what time of day the transports are occurring, and other critical  
2 operations information, it simply should admit it has nothing responsive.

- 3 - **SDT 15** (records/data relating to RBR's calculations as to Dignity affiliated  
4 entities' need for interfacility transport services, currently and in the future).

5 In addition to those objections addressed *supra* at sections III - V, the other  
6 objections Applicant makes here are also inappropriate. "Compound" is not  
7 a basis for objecting to or quashing a subpoena. As the entire Application  
8 is based upon Dignity Health's purported need for interfacility transports,  
9 how can a request targeting Dignity's need be "vague and ambiguous" or  
10 "not reasonably specific/overly broad"? How can this topic not be within this  
11 Office and the Director's purview? If RBR has done no such calculations, it  
12 should simply state that there are no responsive items. Submitting a  
13 laundry list of objections that must be addressed by the AMR CON Holders  
14 and this Office is either insincere or inappropriate.

- 15 - **SDT 16** [similar to SDT 15, this simply requests information "sufficient to  
16 identify the number of patient transports originating from Dignity Health  
17 affiliated facilities located in Maricopa County, done by ambulance during  
18 2016, during 2017 and done, (to date), during 2018." ] This is basic  
19 information necessary for the impact analysis, yet the Applicant objects,  
20 apparently including an objection that this information is unavailable from its  
21 majority owner. The proposition that it is in the custody and control of the  
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1 AMR CON Holders is inappropriate, unless Dignity Health is asserting that  
2 no other ambulance transport provider has done a single transport for any  
3 of its facilities, other than one of the AMR CON Holders, since the  
4 beginning of 2016 - a suggestion that the AMR CON Holders believe to be  
5 inaccurate.

- 6
- 7 - **SDTs 17 and 18.** Both for the impact analysis and because of the  
8 Applicant's disclosure of a witness (as discussed above) to testify to the  
9 subject matter of patients purportedly taking non-ambulance transports  
10 when ambulance transport wait time is too long, these two items were  
11 included. 17 seeks information "sufficient to identify the number of patient  
12 transports originating from Dignity Health affiliated facilities . . . where the  
13 patient was moved to another healthcare facility by non-ambulance  
14 transport . . ." during 2016 through 2018 (to date). 18 requested information  
15 "sufficient to identify" the Dignity entities' policies/rules/guidelines or similar  
16 documentation that relates to the transfer of a patient seen at one Dignity  
17 Health affiliated facility who is then admitted to a second "with specific  
18 regard to the method of transport that will be allowed and/or utilized," limited  
19 to 2016 through 2018. Since this information would seem to be important to  
20 its intended witness presentation, it seems that RBR should simply have  
21 requested the same from its majority owner (a long time ago). Rather,  
22 objections, including sections III and V above, have been made. This  
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1 includes one based upon protected health information about patients (item  
2 17), when all that has been requested is information “sufficient” to identify  
3 the number of transports. “All” information about such transports was  
4 deliberately not requested. The number of such transports is not protected  
5 health information.  
6

7 This information is also relevant to another topic: RBR proposes that in  
8 part the impact of its intended operations will be ameliorated by population  
9 growth (or that is what its intended witness disclosures seem to indicate). It  
10 is the AMR CON Holders’ belief that there is a national phenomenon  
11 happening where ambulance transports, as compared to population, are  
12 actually declining due to the greater availability of alternative transports  
13 such as Uber and Lyft. The AMR CON Holders recently disclosed articles  
14 on this topic (see, July 25<sup>th</sup> First Supplemental Exhibit List, p. 5, item 13).  
15 As such, non-ambulance transports do remain relevant, as those may have  
16 grown in proportion over time. For these reasons, the objections should not  
17 be sustained. Either RBR has this information, or does not.  
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- 20 - **SDTs 19 and 20** (SDT 19 requested the records and data relating to  
21 Applicant’s calculation of its first year’s transport volume, including  
22 estimated volume of transports by individual transport origination location;  
23 SDT 20 makes the same request, as to expected second and third years’  
24 transport volume, or any other future years that RBR has actually  
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1 calculated). Again, this plainly goes to impact. For example, if RBR will be  
2 doing 95% of its intended transports out of four specific Dignity facilities,  
3 and will be leaving smaller facilities with not such a high volume, etc., out of  
4 its first year volume, that will influence the impact upon the AMR CON  
5 Holders and their ability to calculate that impact. It also would bear upon  
6 “public necessity.” Where will RBR be doing its intended first year  
7 transports from? How did it calculate its ability to do those transports with  
8 the stated number of vehicles and employees? This information will relate  
9 to things such as response availability, where and when other providers will  
10 have to back up RBR at Dignity facilities, etc. Rather than providing this  
11 clearly relevant information, or just stating it has nothing responsive, RBR  
12 objects, including for the reasons addressed *supra* at sections III - IV.  
13 Beyond those, the only parts of the “objection” that actually qualify as  
14 objections are relevancy and proprietary/confidential/trade secret  
15 information. The relevancy (which RBR does not substantively address) is  
16 “public necessity” and “impact” on existing providers, as discussed above.  
17 The assertion of proprietary/confidential/trade secret by a CON applicant,  
18 whose intended operations should be fully open and transparent to both  
19 this Office and DHS, is truly ironic, and inappropriate.

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24 - **SDT 21.** This requires production of information “sufficient to specify  
25 Applicant’s intended operations plan . . . including but not limited to those  
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1 items detailing intended posting locations, staffing models and deployment  
2 plans . . . including at least the first two years of operations”. Posting  
3 locations, staffing models and deployment plans are key to the AMR CON  
4 Holders being able to specifically calculate the impact their operations will  
5 suffer should RBR receive a CON, and what measures they can best take  
6 to address/mitigate the same, and in order to present best available impact  
7 information to the Director. However, RBR objects that this is beyond the  
8 scope of information required by DHS (see, section IV above), that it  
9 requires information from the AMR CON Holders to respond (see, section III  
10 above) and that it is “overbroad and unduly burdensome.” How can  
11 information about intended operation plans, such as intended posting  
12 locations, staffing models and deployment plans be overbroad? How can  
13 this not be something that DHS should consider in evaluating “public  
14 necessity,” including impact to existing providers? If RBR has not done any  
15 calculations like this, it should just say so. However, that does not appear  
16 to be the case as it has made these strong objections. It should be required  
17 to disclose records and data sufficient to specify its intended operations  
18 plan or say it has no such plan.  
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**SDTs 22 – 24 (rural/wilderness area impact inquiries)**

Through SDT items 22 – 24, the AMR CON Holders intended to follow-up on the unique rural/wilderness area aspects of the “public necessity” inquiry as set forth in the Notice of Hearing beginning at p. 2 (items 1-3). Nevertheless, RBR asserts its repeated objections addressed at section III and IV above. Despite the fact that these SDT items are modeled upon the Notice of Hearing, the Applicant also objects that they are “vague and ambiguous, overly broad” without any discussion as to why that might be. RBR states that it does not have documents that are responsive “subject to these objections,” which is unclear. If the objections were not made, would it have responsive documents? If so, it should be required to produce them. As with the numerous other places that it has submitted the “we need responses to our subpoenas first” objection, these are topics that the Applicant has been on notice about for a long time, at least since the Notice of Hearing was issued, and that it would have to address even if the AMR CON Holders were not participating as Intervenors. To suggest that the AMR CON Holders must gather and provide to RBR information so that it can meet its burden of proving issues the Notice of Hearing requires be considered turns the burden of proof in this proceeding on its head. The objections should be overruled and the Applicant should be required to produce anything responsive in its possession or to simply state it has nothing.

1 **SDT Items 25 – 34, Which are Directed at Applicant’s Disclosed Exhibits and**  
2 **Disclosed Subject Matter of Witness Testimonies, are Not Objectionable**

3 As is discussed in the beginning of this Response, the Applicant’s disclosure of  
4 expected witnesses included a number of disclosures made by “subject matter” of  
5 expected testimony, rather than by way of a fair summary of expected testimony.  
6 These potential topics, such as possible allegations of substandard service, are  
7 similarly not disclosed as relating to any particular CON holder, or any particular date  
8 or incident. As such, the AMR CON Holders are unable to determine precisely (or  
9 even generally) what they are intended to reference. If these concepts are intended  
10 to apply to any of the AMR CON Holders, their ability to effectively prepare for the  
11 hearing is hampered. Similarly, RBR disclosed eight letters of support for its  
12 Application, including one from a Dignity hospital, and the others from governmental  
13 entities. The AMR CON Holders did make Freedom of Information Act (“FOIA”)  
14 requests to the public entities for records relating to the letters, and was able to  
15 confirm what is apparent from the face of the letters themselves – that they were all  
16 modeled on the same “form letter,” provided to them by RBR’s consultants, EMS  
17 Advisors. However, it is also apparent that many of those FOIA responses were  
18 incomplete. For example, at least one entity contended the only records it has  
19 relating to that letter is the letter itself (meaning it has no emails, form letters or other  
20 communications with EMS Advisors about the letter, which is obviously not true).  
21 The AMR CON Holders crafted very specific SDT items designed to require RBR to  
22 reveal all of it and its consultant’s communications done in order to obtain those  
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1 letters of support, which will go to the weight of the letters, and the credibility of the  
2 letter writers. SDTs were also designed to determine the Applicant's expected  
3 witness testimonies, and what facts those will be based upon, in advance of the  
4 hearing. The Applicant's objections to these SDTs are inappropriate and should not  
5 be sustained. These are as follows:

- 6  
7 - **SDT 25** (anything relating to the CON Application that RBR/its  
8 consultants/attorneys provided "to any person who is not an employee of  
9 Community Ambulance and whom Applicant has listed as a potential  
10 witness . . . or whom it may list as a potential witness"). Objections of  
11 "overbroad, unduly burdensome", "not relevant", and "vague and  
12 ambiguous" are patently inappropriate and should not be upheld. These  
13 Intervenor specifically limited this to witnesses who are not employees of  
14 Community Ambulance, in order to avoid the attorney-client privilege  
15 objection that has been made here. Can the Applicant really contend it  
16 does not know whether certain individuals are employees or not? See also,  
17 the work product discussion at section II above.
- 18  
19 - **SDTs 26 and 27** (information relating to the CON Application provided to or  
20 received from any person or entity writing the letters of support – ADHS Ex.  
21 17-24 and communications with individuals authoring the letters or persons  
22 employed by those entities, that relate to the letters or Community  
23 Ambulance's intended services, limited to those occurring beginning  
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1 January 1, 2016). One must ask how any objection whatsoever could be  
2 made to this item. Nevertheless, RBR objects “overly broad”, “unduly  
3 burdensome”, and “not relevant.” The information and circumstances  
4 leading to these letters of support is essential to assessment of the weight  
5 they should be given, and the letter writers’ credibility, not to mention what  
6 facts and/or knowledge the letter was based upon. These objections must  
7 be rejected. The Applicant also fails to explain how the attorney-client  
8 communication privilege applies here. None of these individuals are  
9 employees of the Applicant. See also, work product discussion above at  
10 section II.  
11

12 RBR has produced some responsive information. However, large  
13 blocks have been redacted, on the grounds of attorney-client  
14 communications **and** work product doctrine. As the work product doctrine  
15 should not apply (*supra*, section II), these should be redisclosed so as to  
16 provide anything purportedly protected by the work product doctrine and to  
17 clarify the basis for asserting the attorney-client communication privilege. .  
18 The Applicant has not explained how the attorney-client privilege or the  
19 work product doctrine can apply to information RBR/its consultants provided  
20 to or received from the third party individuals writing the letters. That  
21 assertion simply does not make any sense. It is also apparent that the  
22 productions made are not complete. For example, form letters provided to  
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1 some of the entities have not been produced (the Tempe response, the  
2 Daisy Mountain response, and the Mesa response), and nothing has been  
3 provided relating to the letter authored by Arizona General Hospital, Gilbert,  
4 Chandler or Avondale. Because of these deficiencies, what has been  
5 provided is obviously incomplete. This Office should require a complete  
6 response.  
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8 Applicant also states it is producing non-privileged documents that are  
9 responsive, subject to the objections. Again, it is not clear if this means that  
10 the Applicant has withheld responsive information beyond that possibly  
11 protected by the attorney-client communication privilege (which if truly  
12 applicable these CON Holders do not mean to require production of). To  
13 the extent anything has been withheld on any grounds other than a properly  
14 applied attorney-client communication privilege, the Applicant should be  
15 required to respond.  
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- 18 - **SDT 28.** Because Arizona General Hospital is a Dignity facility, this item  
19 separately and specifically requested records and data relating to the letter  
20 of support from Arizona General Hospital (ADHS Ex. 22). The possibility of  
21 redaction of patient identifying information prior to production was  
22 acknowledged and approved. Nevertheless, despite its intent to rely upon  
23 that letter during the hearing, RBR objects, including “work product” and  
24 has provided absolutely nothing responsive. Again, the AMR CON Holders  
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1 are not seeking anything truly protected by the attorney-client  
2 communication privilege. However, the basis of that objection must be  
3 clarified and everything else should be produced despite the “overly broad,  
4 vague and ambiguous” objections, none of which are supported by any  
5 discussion and none of which are apparently applicable. These AMR CON  
6 Holders did include a SDT request to Dignity Health for similar information.  
7 However, unless RBR was not instrumental in obtaining this letter, which  
8 would appear to be impossible in that it bears a strong resemblance to the  
9 public entity letters that RBR’s consultants, EMS Advisors, obtained for  
10 them from the various governmental entities authoring them, it should not  
11 be allowed to escape production. If its consultants (EMS Advisors) have  
12 email communications, etc., or if RBR has any electronic information or  
13 paper documentation relating to the request for this letter, the information it  
14 is based upon, the formation of the letter, etc., it should be required to  
15 disclose this as it will go to the credibility and weight of the letter.  
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- 19 - **SDTs 29 and 30** (through these items, some of the subject matter of  
20 testimony disclosed for Jeff O’Malley is targeted). As discussed above, Jeff  
21 O’Malley appears to be intended to be offered to testify to “substandard  
22 service” (despite RBR’s attempt at word play, somehow contending  
23 “substandard interfacility transport performance” was not understood by  
24 them to be what the SDTs reference to “substandard service” in the inquiry  
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1 was intended to address). These are straightforward requests designed to  
2 identify records or data that relate to the expected testimony of Jeff  
3 O'Malley. As his testimony was disclosed well before RBR requested  
4 issuance of any SDTs, it is similarly disingenuous for RBR to propose it  
5 cannot respond until it gets SDT responses (section III, above). If RBR had  
6 no records or data relating to this expected testimony at the time the SDT  
7 response was due, it should have just said so rather than making its laundry  
8 list of inapplicable or theoretical objections. Similarly, SDT 30's request for  
9 records and/or data relating to the "integrated interfacility transport  
10 ambulance service" Jeff O'Malley was disclosed as being offered to testify  
11 in support of, are plainly relevant. Nevertheless, RBR objects that DHS  
12 does not require this information (see, section IV, *supra*). It does not  
13 explain how this is "overbroad" and "unduly burdensome" (see, section V,  
14 *supra*). As with SDT 29, given disclosure of this expected witness  
15 testimony prior to RBR requesting issuance of any SDT, the suggestion that  
16 it requires SDT responses to back it up is disingenuous (see, section III,  
17 *supra*). Further, reservation of the "right to disclose non-proprietary  
18 documents and information" is curious. RBR is the applicant and  
19 transparency as to its intended operations and the grounds for submission  
20 of the Application, as those relate to public necessity, should be required.  
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1 - **SDTs 31 and 32.** Here, the AMR CON Holders are attempting to flesh out  
2 the subject matters of testimony disclosed for RBR's financial impact  
3 witness, Michael Evans, and other "experts" – Beery and Argue – see,  
4 Applicant's initial witness list at pp. 5 and 8. These request records and/or  
5 data that relates to, identifies, and/or details witness opinions (Evans – SDT  
6 31) and the expected statements and/or opinions of those witnesses  
7 (Evans, Beery, Argue), including those records identifying what facts,  
8 assumptions, estimations, calculations any such statements and/or opinions  
9 are based upon (SDT 32). Despite RBR's intention to offer these  
10 individuals to give "expert" testimony, RBR objects. Again, despite  
11 disclosing these expected witnesses well before requesting the issuance of  
12 any SDTs, the lack of SDT responses is offered as an objection (see,  
13 section III, *supra*). RBR also asserts "overbroad and unduly burdensome"  
14 (item 32) without offering any explanation whatsoever as to why this would  
15 be true (see, section V, *supra*).  
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19 In response to both, the Applicant has produced some documentation.  
20 For the most part, this consists of historic ARCR filings by existing Maricopa  
21 County CON holders, RBR's Application, the follow-up communications with  
22 DHS/the Bureau regarding its Application, and an article about Maricopa  
23 Ambulance receiving the City of Scottsdale 911 contract. No  
24 communications between RBR and any of these individuals, no reports  
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1 (preliminary or final), no other documents generated by any of these  
2 individuals, and nothing else unique to any of these individuals or their  
3 expected testimonies/opinions have been produced. Given the current  
4 stage of the proceedings, this lack of production will hamper the AMR CON  
5 Holders' ability to address the same. They cannot be expected to hear  
6 "expert" opinions and the bases for the same, etc., for the first time during  
7 the course of the hearing, or shortly before, and then make the necessary  
8 inquiries, data compilations, etc. as might be required in order to probe  
9 and/or challenge whatever those opinions/testimonies might be. The  
10 Applicant should be required to produce whatever it (or its consultants)  
11 have or can acquire from its hired witnesses that is responsive. If there is  
12 nothing else, it should simply state that fact.

- 15 - **SDTs 33 and 34** These two SDT items were directed at Dignity employees,  
16 Hestand (SDT 33) and Kells (SDT 34), seeking information "identifying,  
17 detailing or otherwise relating to their disclosed (expected) testimonies. As  
18 was discussed in the beginning of this Response, the Applicant disclosed  
19 subject matter of testimony (not a fair summary of expected testimony) for  
20 each, including "negative patient experiences" and "delays in scheduling."  
21 The possibility of redaction of patient identifying information from the  
22 records prior to production was anticipated and approved. Nevertheless,  
23 despite its disclosure of these witnesses, who are employed by its majority  
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1 interest holder, RBR objects to both on practically identical grounds. First  
2 and foremost, it contends this information is in the possession of AMR  
3 and/or RBR's majority owner, Dignity Health. These witnesses were  
4 disclosed on April 23, 2018, well before RBR requested the issuance of  
5 SDTs. If it had a good faith basis for including these subject matters of  
6 testimony then, it should produce the requested information or it should  
7 simply say none exists. It also cannot contend it does not have access to  
8 individuals employed by its majority interest holder. For those reasons  
9 addressed *supra* in sections III and V, the objections should be rejected.  
10 Also, the "subject to and without waiving these objections" disclosure  
11 promise does not tell this Office or the parties what documentation, if any,  
12 currently exists or what Community Ambulance intends to withhold, even if  
13 that withholding will be done in the future. A complete response should be  
14 made or Community Ambulance should simply state that it has nothing  
15 responsive.  
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### 19 **CONCLUSION**

20 For all of the above stated reasons, to the extent the Applicant's "objections"  
21 are construed as a motion requesting affirmative relief, that relief should be denied  
22 except to the extent that documents are shown to be protected by the attorney-client  
23 communication privilege, in which case the AMR CON Holders are not looking to  
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1 obtain the same. Unfortunately, whether or not that objection is applicable in all  
2 places it has been used cannot be determined.

3 RESPECTFULLY SUBMITTED THIS 9<sup>th</sup> day of August, 2018.

4 **SHORALL MCGOLDRICK BRINKMANN**

5 **FLETCHER STRUSE FICKBOHM &  
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9  
10 Pursuant to Case Management  
11 Order No. 1, electronic filing and  
12 service of the foregoing through  
13 <https://portal.azoah.com/oedf/>,  
14 has been done this 9<sup>th</sup> day of August, 2018.

15 By: /S/ Linda Clark