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14 RBR Management, LLC
15 dba Community Ambulance

16 **IN THE OFFICE OF ADMINSTRATIVE HEARINGS**

17 In the Matter of:

18 RBR Management, LLC dba Community
19 Ambulance,

20 Community
21 Ambulance.

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

**APPLICANT'S
RESPONSE TO BUREAU'S
LEGAL MEMORANDUM ON
CERTAIN SUBPOENA ISSUES**

(Assigned to the Honorable
Tammy L. Eigenheer)

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23
24 Community Ambulance appreciates the Arizona Department of Health
25 Services, Bureau of Emergency Medical Services and Trauma System (the
26 "Bureau"), weighing in on the subpoena issues and agrees that the documents
27 sought can and should be narrowed by both Community Ambulance and
28 Intervenors. Based on some of the statements contained in the Bureau's filing,

1 Community Ambulance takes this opportunity to clarify the organizational
2 structure of Community Ambulance and, more importantly, the nature and scope
3 of its CON application, as well as other points the Bureau addresses.

4 **I. Community Ambulance Organizational Structure.**

5 Though Community Ambulance has been referred to as a joint venture in
6 various contexts, Community Ambulance is a limited liability company that is co-
7 owned by Ambulance Management Group, LLC (“AMG”) and Dignity Health. AMG
8 is owned and operated by ambulance operators Robert Richardson and Brian
9 Rogers who also run the day-to-day operations of Community Ambulance pursuant
10 to the terms and conditions of a Management Agreement with Community
11 Ambulance.

12 **II. Nature and Scope of Community Ambulance’s CON Application:**

13 Through its CON application, Community Ambulances seeks a CON to
14 provide interfacility and convalescent transports throughout Maricopa County,
15 with a primary focus on servicing Dignity Health patients and providing an
16 integrated ambulance solution to better meet the needs of Dignity Health and its
17 patients. Indeed, the first-year transports Community Ambulance included in its
18 Application are 100% Dignity Health patient transports in Maricopa County. For
19 clarity’s sake, however, Community Ambulance’s CON Application is not expressly
20 limited to transports to and/or from Dignity Health’s facilities. As a practical
21 matter, because transports are based on the origin of pick-up and not destination,
22 Community Ambulance’s contemplated CON must be countywide to serve Dignity
23 Health patients wherever they may reside in Maricopa County. Furthermore, if
24 awarded its CON, Community Ambulance would be available to provide additional
25 inter-facility and convalescent transport services to patients who are outside the
26 Dignity Health system so long as those additional transports can be provided
27 without sacrificing the level of care and service Community Ambulance provides.

1 In this way, Community Ambulance seeks to improve patient care and contribute
2 to the overall enhancement of system in Maricopa County.

3 **III. Subpoena Issues:**

4 **A. General**

5 Community Ambulance will not rehash its objections and positions taken in
6 its briefs related to the various subpoenas but is willing to review its subpoena
7 requests again to limit the scope of those subpoenas to obtain documents it needs
8 to defend against Intervenors' various affirmative defenses. Much of the
9 information sought by Community Ambulance through its subpoenas relates to
10 broad and sweeping testimony proposed by Intervenor witnesses about the impact,
11 much of it financial, of Community Ambulance being granted its CON. For
12 example, several of Community Ambulance's subpoena requests relate to
13 Intervenors' assertions that they will be negatively financially impacted by the
14 entrance of Community Ambulance into the system, even though ABC currently
15 acknowledges it has no transports for any Dignity Health facilities and Maricopa
16 Ambulance only recently began providing limited transports to fill a need created
17 by Dignity Health's extreme dissatisfaction with the AMR CON Holders.

18 **B. Requests for 911 Data**

19 Community Ambulance believes that a system that contains both IFTs and
20 911 are interconnected and one cannot be evaluated without reviewing the other.
21 It appears from several filings by Intervenors that they would agree.

22 For example, in AMR's initial list of witnesses and exhibits, several AMR
23 witnesses are expected to testify that the entry of Community Ambulance "will
24 require these Intervenors to shift and reduce currently deployed resources, which
25 will inevitably result in both slower 911/immediate and non-immediate (IFT,
26 convalescent, etc.) response times. The Intervenors have already seen similar
27 impacts from the entry of other CON holders into the overall Maricopa County
28

1 system.”

2 Community Ambulance understands the Bureau’s desire to limit the scope
3 of information being exchanged in this process both to make sure that only relevant
4 information is being requested but also to make sure that the 10-day hearing
5 limitation is met; however, without the 911 data being sought by Community
6 Ambulance through its subpoenas, there is no way for it to verify or challenge the
7 type of witness testimony set forth above.

8 **C. Requests for Information Required for Inspection or Review**
9 **by the Director/ADHS**

10 Community Ambulance agrees with the Bureau’s position that the mere fact
11 that information is required by ADHS to be maintained by a CON holder does not
12 automatically make that information discoverable through subpoenas or
13 otherwise; however, Intervenors should not be able to object to a subpoena on the
14 basis that it is overburdensome if the information being requested is required to
15 be maintained by the CON holder. As stated above and below, much of this
16 information is at issue as a result of Intervenors’ own affirmative arguments and
17 such information should be provided where the information is already maintained,
18 and such information is at issue as a result of Intervenors’ own proposed
19 arguments and testimony.

20 **D. Records More than Three-Years Old**

21 With the exception of any affirmative arguments or issues raised by
22 Intervenors that involve records or information more than three-years old,
23 Community Ambulance agrees with the Bureau’s that documents older than three-
24 years old are unnecessary and will review its subpoena to remove any such
25 requests.

26 **E. Proprietary Information**

27 Generally speaking, Community Ambulance agrees that proprietary
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1 information should not be discoverable in the CON process; however, in this case,
2 the information being sought relates to affirmative arguments made by
3 Intervenors in their filings, including broad statements about the negative
4 financial impact that Community Ambulance will have on Intervenors if it is
5 granted its CON. The problem with limiting the scope of discoverable information
6 in this manner is that it does not address the fact that Intervenors have and will
7 make affirmative arguments without producing any information that supports (or
8 contradicts) their contentions. Where Intervenors have specifically put information
9 at issue through proposed testimony and conclusory statements in their filings, the
10 information itself must be discoverable whether it is proprietary or not. Otherwise,
11 Community Ambulance has little to no opportunity to properly evaluate the
12 information for cross examination. While Community Ambulance agrees that it
13 cannot make its case based on proprietary information, Intervenors should not be
14 able to oppose the CON application using its own proprietary information without
15 disclosing it to Community Ambulance and ADHS.

16 **F. 10-day Hearing Limit**

17 Community Ambulance is committed to comply with the statutory time
18 limitation but will seek clarification at the outset of the hearing on a fair means to
19 allocate the amount of time attributed to Community Ambulance on the one hand
20 and Intervenors on the other. This is of chief concern because there are three
21 Intervenors that may want to cross examine each of Community Ambulance's
22 witnesses and take up a disproportionate amount of time during Community
23 Ambulance's case in chief, which will leave inadequate time for Community
24 Ambulance to prove the factors required to be granted its CON.

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RESPECTFULLY SUBMITTED this 27th day of September, 2018

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<https://portal.azoah.com/oedf>, with
copies provided to all parties on the
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<https://portal.azoah.com/oedf/documents/2017-EMS-0104-DHS/index.html>,
in accordance with Case Management Order No. 1.

By: /s/ Jeffrey Meyerson