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11 RBR Management, LLC
dba Community Ambulance

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13 **IN THE OFFICE OF ADMINSTRATIVE HEARINGS**

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15 In the Matter of:
16 RBR Management, LLC dba
17 Community Ambulance,
18 Applicant.

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

**COMMUNITY AMBULANCE'S
PREHEARING MEMORANDUM**

(Assigned to the Honorable
Tammy L. Eigenheer)

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22 In advance of the ten (10) day hearing scheduled to begin on October 22,
23 2018, RBR Management LLC, dba Community Ambulance (“Applicant” or
24 “Community Ambulance”) submits its prehearing memorandum for the
25 consideration of Administrative Law Judge Tammy L. Eigenheer (“Judge
26 Eigenheer”) in lieu of an opening statement.
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1. INTRODUCTION

On June 10, 2016, Community Ambulance filed its application for a certificate of necessity (“CON”) (CA-Ex. 1). Through its application, Community Ambulance seeks a CON to provide interfacility and convalescent transports with a primary focus on improving service to Dignity Health’s patient population in Maricopa County. As the Arizona Department of Health Services (“ADHS”), Bureau of EMS and Trauma Services (“BEMSTS”) identified through its opening brief, the focus of this CON Hearing is expected to be on the issues of fit and proper, whether there is public necessity for the proposed service, and the setting of initial rates and charges.

With respect to the question of whether Community Ambulance is fit and proper to operate an ambulance service in Maricopa County, the evidence will overwhelmingly establish that Community Ambulance has the expertise, integrity, fiscal competence, and resources necessary to operate an ambulance service and provide interfacility and convalescent transports in Maricopa County. Robert Richardson and Brian Rogers, the CEO and COO of Community Ambulance respectively, have almost 70 years of combined ambulance experience in the private and public sector from working as emergency medical technicians and paramedics to the highest levels of management for Community Ambulance and other ambulance companies in Southern Nevada, including ambulance companies owned and operated by American Medical Response and its affiliates. Community Ambulance, and Mr. Richardson and Mr. Rogers individually, have been recognized at the city, county, state and national levels for their consistent commitment to patient care and the community, most recently with respect to the tragic mass casualty shooting on October 1, 2017 at the Route 91 Harvest Festival in Las Vegas, Nevada. Community Ambulance was the on-site stand-by ambulance medical provider at the festival as it does for hundreds of events each

1 year in Las Vegas and provided critical on-scene medical direction when the shots
2 first rang out in addition to its ambulance transport response.

3 The evidence will also show that Community Ambulance is fit and proper
4 from a financial competency and resources standpoint. Community Ambulance
5 has over \$2,500,000 in available funds to establish and maintain its operations
6 in Maricopa County. Furthermore, Dignity Health, the 50.1% owner of
7 Community Ambulance, has more than enough available capital to supplement
8 and contribute to Community Ambulance's operations if necessary and is
9 committed to ensuring Community Ambulance operates as successfully in
10 Maricopa County – to the benefit of the Dignity Health patient population – as it
11 has operated in Southern Nevada.

12 After the initial application was filed, Community Ambulance desired to
13 participate in the Phoenix Uniform Rate Group and submitted a revised ARCR
14 applying the applicable base and mileage reimbursement rates to its pro forma
15 financial information. Based on the financial analysis by ADHS and its own
16 revised ARCR, Community Ambulance expects to be profitable and able to self-
17 sustain its operations in Maricopa County long-term. While Community
18 Ambulance will accept a CON with other rates, it is Community Ambulance's
19 understanding that it can elect to be part of the Uniform Rate Group so long as
20 it shows financial sustainability and the Director reviews and agrees with that
21 analysis. Community Ambulance prefers to participate in the Phoenix Uniform
22 Rate Group for parity with the other participants in that group, which include
23 American Medical Response ("AMR") and Maricopa Ambulance ("MA").

24 The evidence will further demonstrate that there is a public necessity in
25 Maricopa County for an additional interfacility and convalescent transport
26 provider. Through its application, Community Ambulance's 11,315 projected year
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1 one patient transports are all Dignity Health patient transports in Maricopa
2 County, and represent a very small percentage of the more than 300,000 annual
3 transports for ambulance service in Maricopa County reported in 2017. The
4 evidence will show that granting a CON to Community Ambulance to provide
5 those 11,315 Dignity Health patient transports scarcely cuts into the existing
6 transport business of Intervenors AMR and its affiliates, MA, and ABC
7 Ambulance, LLC (“ABC”) and its entry into the market will not “drive any of the
8 current providers out of business.” See *In the Matter of: Maricopa Ambulance,*
9 *LLC*, April 18, 2016, Decision, 2015-EMS-0190-DHS, Conclusions of Law, at
10 20:21-25, ¶20; see also *In the Matter of American Medical Response of Maricopa,*
11 *LLC*, 2014A-EMS-0305-DHS, 70:28-71:2, ¶30 (“[T]he statutes and regulations do
12 not require that existing CON holders remain whole and suffer no adverse
13 financial impact, which would necessarily occur at some level.”)

14 AMR, the dominant ambulance provider in Maricopa County handled
15 206,948 of the over 300,000 transports recorded in Maricopa County for 2017.
16 The fractional loss of 11,315 transports will have a slight financial impact on
17 AMR, but certainly will not drive AMR out of business. Nor should Dignity Health
18 be forced to continue using AMR when, as the evidence will show, Dignity Health
19 has been dissatisfied with AMR’s level of service and failure to honor its
20 contractual commitments to, among other things, provide accurate and honest
21 transport data reporting and not interfere with Dignity Health’s efforts to develop
22 an ambulance service in Maricopa County.

23 Due to the souring of Dignity Health’s relationship with AMR, Dignity
24 Health has just recently turned to MA to provide some, but nowhere near all of
25 the Dignity Health patient transports in Maricopa County. Evidence from
26 Dignity Health and Arizona General Hospital (“Arizona General”) witnesses will
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1 establish that MA acknowledges it has a limited presence in the ever-growing
2 East Valley and would need to shift its resources from lower volume customers
3 in order to meet the needs of Dignity Health's overall system – evidence standing
4 alone that demonstrates a public need for an additional interfacility transport
5 provider in Maricopa County. Given the current transport volumes today – versus
6 the volumes in 2016 – the evidence will also show that MA will not be shuttered
7 by Community Ambulance's entry into the market. MA is steadily growing, and
8 has recently entered into contracts to provide 911 service to the City of Scottsdale
9 and the City of Surprise. And, of course, the financial harm to MA is mitigated
10 by the fact that MA decided to enter into a contract with Dignity Health with the
11 understanding that Community Ambulance's application to provide Dignity
12 Health with an integrated and dedicated ambulance solution was and is pending.
13 Prior to the termination of the contractual relationship between AMR and
14 Dignity Health, MA provided few, if any, transports for Dignity Health.

15 Finally, ABC's CON limits its ability to provide the type and level of service
16 Dignity Health is seeking in a transport partner in Maricopa County. The CON
17 both limits the number of ambulances ABC can operate and restricts ABC's
18 authority to provide service in certain parts of Maricopa County. One of Dignity
19 Health's primary concerns is the timely and efficient movement of its acute
20 patients requiring urgent transport as evidenced by the arrival time
21 requirements set forth in its contracts with AMR and MA. But, ABC does not
22 have interfacility transport arrival times built into its CON, and evidence will
23 show that ABC will not commit to arrival time requirements as clearly desired
24 by Dignity Health. Dignity Health and Arizona General witnesses will also testify
25 that ABC currently does not provide any of the 11,315 Dignity Health patient
26 transports to and/or from Dignity Health facilities that Community Ambulance

1 anticipates handling in year one.

2 Community Ambulance’s application is widely supported by the fire chiefs
3 of Phoenix, Mesa, Chandler, Tempe, Avondale, Daisy Mountain Fire District, the
4 mayor of Gilbert, as well as Arizona General, as evidenced by the letters of
5 support submitted to the Department (ADHS Exs. 17-24; CA Exs. 111-119.)
6 Moreover, neither Buckeye Valley nor North County have intervened in this
7 hearing process to prevent Community Ambulance from providing transports in
8 those districts where Intervenors are currently prevented from entering. Indeed,
9 each of the Intervenors have geographic restrictions preventing them from
10 transporting Dignity Health patients to or from certain areas within Maricopa
11 County, including (but not limited to) the Buckeye Valley Rural Volunteer Fire
12 District (“Buckeye Valley”) (CON 8) and North County Fire and Medical (“North
13 County”) (CON 114).¹

14 The evidence will establish that Community Ambulance is fit and proper,
15 and that its operators – Richardson and Rogers – will be a valuable addition to
16 the existing ambulance providers in Maricopa County and there is a public
17 benefit and necessity to having an additional interfacility and convalescent
18 provider of patient transports in Maricopa County.

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20 **2. APPLICABLE STATUTE AND REGULATIONS AT ISSUE IN HEARING**

21 A.R.S. § 36-2233(B) provides that the Director shall issue a certificate of
22 necessity if all of the following apply:

- 23 1. The ambulance service has a certificate of
24 registration issued by the department for at
25 least one ambulance pursuant to § 36-2212.

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27 ¹ AMR and MA are excluded from North County, except for the campus of
28 Banner Del Webb hospital.

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- 2. The director finds that public necessity requires the service or any part of the service proposed by the applicant.
- 3. The director finds that the applicant is fit and proper to provide the service.
- 4. The applicant has paid the appropriate fees pursuant to § 36-2240.
- 5. The applicant has filed a surety bond pursuant to § 36-2237.

As DHS has identified through its prehearing memorandum, the focus of this CON Hearing is expected to be on the issues of fit and proper, public necessity, and the setting of initial rates and charges. For the other factors in A.R.S. §36-2233(B)(1); (B)(3), & (B)(5), Community Ambulance will establish that upon the issuance of a CON, it will have (a) a certificate of registration issued by the Department for at least one ambulance pursuant to A.R.S. § 36-2212, (b) paid the appropriate fees pursuant to A.R.S. § 36-2240, and (c) is not required to file a surety bond pursuant to A.R.S. § 36-2237.

3. COMMUNITY AMBULANCE IS FIT & PROPER

The “fit and proper” factor requires a determination by the Director that “an applicant for a certificate of necessity ... has the expertise, integrity, fiscal competence and resources to provide ambulance service in the service area.” A.R.S. § 36-2201(21). Community Ambulance, which is accredited by the Commission on Accreditation Ambulance Services (“CAAS”), is confident the evidence presented at the hearing will clearly establish that it meets these criteria. With nearly 70 years of combined experience as emergency medical technicians, paramedics, emergency medical service instructors, and ambulance company operators, Robert Richardson and Brian Rogers are vastly experienced, well-qualified, well-recognized, and dedicated ambulance service owners and

1 operators. Moreover, Community Ambulance comes to the Maricopa County
2 service area not only with expertise and integrity, but with the financial
3 competence and resources to provide ambulance service in Maricopa County.

4 **3.1. Expertise and Integrity**

5 Robert Richardson, CEO of Community Ambulance

6 Mr. Richardson has worked in emergency medical services since 1985,
7 beginning his career as a paramedic. In 1989, Mr. Richardson began work at
8 Mercy Ambulance in Las Vegas, where he held numerous leadership roles
9 including field supervisor, director of specialty care services, and operations
10 manager. During that time, he managed and directed hundreds of major events
11 including concerts, boxing matches, racing events, rodeos, and marathons and
12 contracted specialized medical inter-facility transports to meet specific needs of
13 his customers. By 1995, Mr. Richardson was elevated to Operations Manager of
14 American Med Tech located in Bellevue, Washington.

15 After turning his professional career to the ownership and operation of a
16 large gas station facility with multiple food establishments, in 1998 Mr.
17 Richardson returned to ambulance service and worked as the Director of
18 Specialty Care Services for AMR in Las Vegas.

19 In 2000, Mr. Richardson turned his career to the public sector as a
20 firefighter and paramedic for the City of Henderson. After working up the ranks,
21 Mr. Richardson became a Communications Services Officer and in 2008 Mr.
22 Richardson achieved the position of Division Chief of Special Operations,
23 responsible for all supervisory and administrative duties necessary to command,
24 direct, and coordinate the activities of the Special Operations Division of the
25 Henderson Fire Department. Mr. Richardson retired early from the Henderson
26 Fire Department as Division Chief in 2012 to dedicate all of his time to

1 Community Ambulance.

2 Before retiring from Henderson Fire, Mr. Richardson seized on an
3 opportunity to form Community Ambulance to fill a desperate need for
4 interfacility courtesy transports in the St. Rose Dominican (Dignity Health)
5 hospital system in Henderson Nevada to relieve hospital overcrowding issues.
6 Starting with 3 ambulances, Mr. Richardson in his role as CEO, along with COO
7 Brian Rogers, have successfully provided high-quality interfacility ambulance
8 transports in Southern Nevada for 8 years, and added 911 service for Clark
9 County in 2016 and backup 911 for the City of Henderson in 2016.

10 Mr. Richardson has an Associate Degree in Paramedicine from Brigham
11 Young University, Idaho (which at the time was called Ricks College), a
12 Bachelor's Degree in Healthcare Administration from the University of Nevada,
13 Las Vegas, and a Master's Degree in Executive Fire Service Leadership from
14 Grand Canyon University.

15 Brian Rogers, Chief Operating Officer of Community Ambulance

16 Mr. Rogers has worked in the ambulance industry for over 35 years,
17 starting at 18 years old as a medical vehicle operator who worked his way to the
18 Director of Operations for an AMR company in Southern Nevada.

19 In 2001, Mr. Rogers helped launch Southwest Ambulance, now known as
20 MedicWest. As managing director, Mr. Rogers was critical in growing MedicWest
21 from a startup to more than 250 medics, directors, managers, and field
22 supervisors responding to thousands of calls annually.

23 In February 2008, the Henderson Fire Department recruited Mr. Rogers
24 and he transitioned from the private sector to the public sector, becoming an
25 officer in the emergency medical services department. During that time, however,
26 John Wilson, the general manager for AMR-MedicWest asked Mr. Rogers to work
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1 part-time as a consultant and provide system status management for AMR-
2 MedicWest. While working as an officer for Henderson Fire, Mr. Rogers continued
3 to provide system status management plans for AMR-MedicWest and worked as
4 a paramedic on their ambulances until 2010.

5 In 2010, Mr. Rogers helped form Community Ambulance, and has overseen
6 all operations since 2010, including recently acquired 911 service in Clark County
7 and back-up 911 in the City of Henderson. In fact, using Mr. Rogers' system
8 status management expertise and plans, Community Ambulance consistently
9 achieves the best interfacility arrival times and now 911 response times where it
10 competes directly with private ambulance companies like AMR Las Vegas and
11 MedicWest (another AMR company).

12 As Mr. Rogers will testify, he has worked and managed every aspect of an
13 ambulance service and has a particular expertise in system-status management
14 and operations. Moreover, Mr. Rogers has been certified and instructed in, among
15 other things, Basic Life Support, Advanced Cardiac Life Support, Pediatric
16 Advanced Life Support, Pre-Hospital Trauma Life Support, served on the
17 American Heart Association's affiliate faculty, and continues to serve as an
18 Emergency Medical Services instructor. More recently, Mr. Rogers has been
19 locally and nationally recognized for his tireless efforts during the tragic mass-
20 casualty event on October 1, 2017 at the Route 91 Festival in Las Vegas. Not only
21 has he been recognized for his efforts during that event, but has been asked by
22 the United States Department of Health and Human Services ("HHS") to work
23 with HHS and Federal Emergency Management Agency ("FEMA") to develop a
24 mass-casualty response training program to learn from his and others experience
25 in responding to such an event.

26 Mr. Rogers has a Bachelor's of Science in Management from University of
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1 Phoenix and Advanced Paramedic training from University Medical Center of the
2 University of Nevada, Las Vegas.

3 **3.2. Fiscal Competence and Resources.**

4 In addition to the expertise and integrity of its operators, Community
5 Ambulance will demonstrate that it has the financial capacity and resources to
6 comfortably operate an ambulance service in the proposed service area.
7 Community Ambulance comes to this market with between \$500,000 and
8 \$700,000 in operating cash from its current ambulance service that can be
9 accessed for its Maricopa County start-up operations, a \$1,000,000 line of credit
10 for operations in Maricopa County, and a \$1,500,000 operating line of credit for
11 capital/equipment purchases for the Maricopa County operations.

12 Moreover, Community Ambulance has the financial backing of majority
13 owner Dignity Health. Dignity Health is made up of more than 60,000 caregivers
14 and staff who deliver excellent care to diverse communities in 21 states. Dignity
15 Health is the fifth largest health system in the nation and is committed to
16 providing high-quality, affordable health care to the communities it serves,
17 advocating for those who are poor and disenfranchised, and partnering with
18 others in the community to improve the quality of life. In holding true to these
19 values, the evidence will show that Dignity Health's community outreach and
20 investment in underserved communities cannot be disputed. For fiscal year 2018,
21 Dignity Health reports community benefit and care of the poor (including unpaid
22 cost of Medicare) totaling \$2.1 billion. Dignity Health's corporate witnesses will
23 testify that Dignity Health currently has approximately \$1.6 billion dollars
24 invested in 110 different integrated partnerships, like Community Ambulance,
25 throughout its system, and mechanisms are in place through the Community
26 Ambulance relationship for Dignity Health to contribute capital to this endeavor

1 to ensure a successful start-up of operations in Maricopa County.

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3 **4. THERE IS A PUBLIC NECESSITY FOR THE PROPOSED SERVICE**

4 Public necessity, as used in A.R.S. 36-2233(B)(2), means “an identified
5 population needs or requires all or part of the services of a ground ambulance
6 service.” Importantly, the public necessity requirement does not require evidence
7 that the existing CON holders are not meeting the needs of the community. The
8 “primary focus in evaluating public necessity is upon the best interests of the
9 public, not upon protecting the territory or property rights of the current providers
10 in the area.” *In the Matter of American Medical Response of Maricopa, LLC*, 2014A-
11 EMS-0305-DHS, 50:10-18, ¶38 (findings based on testimony of Terry Mullins
12 regarding the Bureau’s Guidance Document.)

13 In determining whether to issue a CON to more than one ambulance service
14 for interfacility or convalescent transport services in this matter, the Director
15 considers the following public necessity factors²:

- 16 1. The factors in subsections
- 17 (A)(2): The population demographics within the
18 proposed service area;
- 19 (A)(3): The geographic distribution of health care
20 institutions within and surrounding the
21 service area;
- 22 (A)(4): Whether issuing a certificate of necessity to
23 more than one ambulance service within the
24 same service area is in the public’s best
25 interest, based on:

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27 ² A.A.C. R9-25-903(A)(B)

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(a) The existence of ground ambulance service in all or part of the service area;

(c) the availability of certificate holders in all or part of the service area;

(d) The availability of emergency medical services in all or part of the services area;

(A)(5): The information at 9-25-902(A)(1) & (A)(2);
and

(A)(6): Other matters determined by the Director or the applicant to be relevant to the determination of public necessity

- 2. The financial impact on certificate holders whose service area includes all or part of the service area in the requested certificate of necessity;
- 3. The need for additional convalescent or interfacility transport; and
- 4. Whether a certificate holder for the service area has demonstrated substandard performance.

No single factor in the public necessity analysis is determinative. The Director is charged with considering and balancing any information introduced at the hearing on these factors in the context of the application and the proposed service area. Any failure to provide information or establish any one factor does not, by itself, constitute grounds to deny an application. *See In the Matter of: American Medical Response of Maricopa, LLC*, Decision, 2015-EMS-0190-DHS, Conclusions of Law, at 67:23-26, ¶11 (citing A.A.C. R9-25-903). Furthermore, the “primary focus should be on the best interests of the public and not upon protecting the territory or service interests of current providers in the area,

1 although the impact on the current provider(s) service, and on the public in and
2 near to the application area, are factors to be considered.” Guidance Document,
3 GD-099-PHS-EMS.

4 **4.1. The population demographics within the proposed**
5 **service area and geographic distribution of healthcare**
6 **institutions. (A.A.C. R9-25-903(A)(2) & (3))**

7 According to the U.S. Census Bureau, as of July 1, 2017, Maricopa County
8 has an estimated population of 4,307,033. *See In the Matter of: Maricopa*
9 *Ambulance, LLC*, April 18, 2016 Administrative Law Judge Decision, Findings of
10 Fact, at 2:26 ¶2. The U.S. Census Bureau reports that Maricopa County is the
11 fastest growing county and the 4th most populous county in the United States,
12 adding just under 500,000 additional residents since 2010. *Id.* Further, Maricopa
13 County “contains thousands of public and private health care facilities
14 throughout the county.”³ *In the Matter of: Maricopa Ambulance, LLC*, Findings
15 of Fact, at 2:25-26, ¶2. Among these are 19 Dignity Health facilities, including
16 hospitals, urgent cares, and freestanding emergency rooms, as well as at least a
17 dozen affiliates.

18 “The market for ambulance transport in Maricopa County is large enough
19 to sustain multiple private providers.” *See In the Matter of: Maricopa Ambulance,*
20 *LLC*, 2015-EMS-0190-DHS, Conclusions of Law, at 25:3-4, ¶17. The evidence will

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23 ³ The Court can take judicial notice of these U.S. Census Bureau facts and facts
24 found in a previous CON hearing. *See* Ariz. R. Evid. 201 (“judicially noticed fact
25 must be one not subject to reasonable dispute in that it is either (1) generally
26 known within the territorial jurisdiction of the trial court or (2) capable of
27 accurate and ready determination by resort to sources whose accuracy cannot
28 reasonably be questioned.”); *In re Sabino R.*, 198 Ariz. 424, 425, 10 P.3d 1211,
1212 (Ct. App. 2000) (court may take judicial notice of any fact the trial court
could take notice, and may take notice of its own records or those of another
action tried in the same court.)

1 show that Dignity Health has not received the level of service it expects for its
2 growing patient population from the current ambulance providers. Dignity
3 Health (and Banner Health) have added several facilities in recent years, and
4 there will be testimony that patient acuity is on the rise, especially at urgent
5 cares and stand-alone emergency rooms. These factors combine to drive a need
6 for additional, non-911 urgent interfacility transport capacity in Maricopa
7 County.

8 **4.2. Issuing a certificate of necessity to more than one**
9 **ambulance service in Maricopa County is in the**
10 **public's best interest (A.A.C. R9-25-903(A)(4)(a)(c)(d))**

- 11 (a) The existence of ground ambulance service to
12 all or part of the service area;
13 (c) the availability of certificate holders in all or
14 part of the service area; and
15 (d) the availability of emergency medical
16 services in all or part of the services area

17 There are multiple CON holders in all or part of the Maricopa County
18 service area. A great number of these are public CON holders, most of whom only
19 provide 911 ambulance service to all or part of the service area. *See In the Matter*
20 *of: Maricopa Ambulance, LLC, 2015-EMS-0190-DHS, Conclusions of Law, at*
21 *25:9-13, ¶18.* Very few of these public providers also provide interfacility and
22 convalescent transports: Buckeye Valley Rural Volunteer Fire District, North
23 County Fire and Medical, Daisy Mountain Fire District, Sun Lakes Fire District
24 and City of Mesa.

25 To the extent that Intervenor provide interfacility and convalescent
26 transports, however, their CONs do not necessarily reach all of Maricopa County.
27 In particular, their CON's exclude areas where the public ambulance service also
28 provides interfacility transports. For example, the CONs for AMR and MA
exclude (1) Buckeye Valley Rural Volunteer Fire District (2) North County Fire

1 and Medical; (3) Daisy Mountain Fire District (CON 105); and Sun Lakes Fire
2 District. In addition to limitations on the number of ambulances, ABC's CON
3 also excludes (1) Buckeye Valley Rural Volunteer Fire District and (2) North
4 County Fire and Medical, except for the campus of Banner Del Webb Hospital.
5 Furthermore, Daisy Mountain Fire District and the City of Mesa, both
6 interfacility providers have submitted letters of support to the Department in
7 favor of Community Ambulance's CON application.

8 If awarded, Community Ambulance's CON would not have these
9 limitations. As such, Community Ambulance will be better positioned to enhance
10 and improve interfacility service to otherwise underserved and more rural areas
11 or Maricopa County. Urban areas will benefit too. As Fire Chief Mary Cameli of
12 Mesa Fire and Medical Department states: "By granting this CON application,
13 inter-facility transportation services will be enhanced for all with the addition of
14 more available ambulances to serve the needs of all levels of inter-facility patient
15 care."

16 **4.3. The financial impact on existing CON Holders**

17 The evidence will show that the entry of Community Ambulance into the
18 interfacility and convalescent transport market in Maricopa County, with a focus
19 on providing a dedicated and integrated ambulance service to and/or from Dignity
20 Health's facilities, may have a minor financial impact on Intervenor, but will not
21 "drive any of the current providers out of business." *See Maricopa Ambulance,*
22 *Decision, 2015-EMS-0190-DHS, at 20:21-25, ¶20; AMR of Maricopa, LLC,*
23 *Decision 2014A-EMS-0305-DHS, 70:28-71:2, ¶30* ("[T]he statutes and regulations
24 do not require that existing CON holders remain whole and suffer no adverse
25 financial impact, which would necessarily occur at some level.")

26 AMR in Maricopa County had a preferred provider agreement with Dignity
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1 Health and was the primary provider of ambulance transport services to
2 and/from Dignity Health facilities. Community Ambulance developed its 11,315
3 transports figure for the application based on AMR's 2016 first quarter transport
4 reporting to Dignity Health. Those transports represent approximately 5% of the
5 total transports all of AMR's Maricopa County CON Holders handled in 2017. At
6 most, the expected testimony will be that AMR's potential net loss of these
7 transports is approximately 14% of its current combined net profit of \$4,777,093.
8 The financial impact on AMR through the potential loss of these transports will
9 not lead to the financial ruin of AMR to the detriment of the public.

10 MA, a subsidiary of national ambulance company Priority Ambulance, did
11 not have any Dignity Health transports until recently – and has been providing
12 those transports with the knowledge that Community Ambulance's application
13 for a CON is pending. Consequently, MA simply cannot rely on these transports
14 to argue financial harm. MA continues to grow even without these recent Dignity
15 Health transports, adding additional transports to its service through 911
16 contracts with the City of Scottsdale and the City of Surprise. While the Dignity
17 transports may still be available to MA through collaborative back-up
18 agreements with Community Ambulance, the loss of these transports in the event
19 a CON is awarded to Community Ambulance will not put MA out of business,
20 which is the steep burden set in previous hearings on this factor.

21 With respect to ABC, the evidence will show that the entry of Community
22 Ambulance will have no material financial impact on ABC's operations. ABC
23 acknowledges that it currently performs virtually no transports to and/or from
24 Dignity Health facilities. To be sure, when asked through subpoenas for records
25 of Dignity Health transports, ABC represented it had none. On this fact alone,
26 ABC will suffer no adverse financial impact if Community Ambulance is awarded

1 its CON. Furthermore, ABC has recently represented to the Department that “it
2 has experienced steady growth, and during 2017, saw its operations grow
3 significantly with increased transport activity, increased headcount, and a move
4 to a new headquarters facility to accommodate its needs.” (ABC-Ex. 20.) ABC
5 represented to the Department “[t]ransports grew from 4,735 in 2016 to 8,067 in
6 2017. And, without any Dignity transports, ABC told the Department that
7 “[t]ransports in 2018 are expected to continue to grow from the levels achieved in
8 the fourth quarter of 2017. Total transports of 11,140 are projected for 2018,
9 which is a 38.1% increase from 2017.”

10 It is anticipated ABC will argue that 47% of its total transports are derived
11 from the Arizona Care Network (“ACN”), a physician-led, physician governed
12 clinically integrated network. The ACN is governed by a 21-member Board of
13 Managers, composed of 15 independent physicians representing all regions of the
14 Valley and a blend of primary care physicians and specialists, five healthcare
15 administrators representing Dignity Health Arizona and Abrazo Community
16 Health Network, as well as one Medicare beneficiary. The evidence will show that
17 the ACN is independent from Dignity Health and Dignity Health has no power
18 to direct or control which ambulance service providers participants in the ACN
19 utilize for transport services. This is further supported by the fact that the
20 Dignity Health customer agreements with AMR, MA, and the contemplated
21 customer agreement with Community Ambulance do not provide for ACN
22 transports.

23 Put simply, granting a CON to Community Ambulance will not drive any
24 of the current providers out of business.

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4.5. The need for additional convalescent or interfacility transport

This factor should be considered in the context of the overarching regulatory environment that focuses on public health and welfare and whether the public’s best interest will be served by the addition of an interfacility transport company.

Dignity Health witnesses will testify that as the preferred provider of interfacility transports for Dignity Health system-wide beginning in 2015, AMR has simply not been a good ambulance transport partner. There will be evidence of, among other things, inaccurate reporting of performance data, extended arrival times for urgent interfacility patient transports, misuse of the 911 system for urgent transports, crews that lack proper training, and at least one patient who was required to be sent by air because requested equipment was not on-board an ambulance.

There will also be evidence from Matthew Karger, an EMS/Transfer Coordinator who works in the Arizona General system, that there is a need for additional interfacility providers. Mr. Karger will testify that AMR has performed insufficiently and has little interest assisting Arizona General in transporting patients from lower volume free-standing emergency rooms in the West Valley. Though Arizona General now looks to MA for some of those West Valley transports, MA has acknowledged that it does not have the ability to handle Arizona General’s interfacility transport needs in the East Valley – leaving Arizona General and Dignity Health little option but to continue utilizing AMR – even though they would prefer to use another provider.

ABC, as mentioned above, has a CON that limits its ability to provide the type and level of service Dignity Health is seeking in a transport partner in Maricopa County. Furthermore, there will be evidence that ABC is unwilling to commit to the arrival time requirements Dignity Health demands of any

1 ambulance service providing transports for its patients. In addition, Mr. Karger
2 will testify that ABC never once solicited Arizona General to provide any
3 transports and he has real concerns that ABC has the capacity to cover Arizona
4 General transports or handle the critical care patients Arizona General regularly
5 transports to higher levels of care.

6 **4.6 Whether a certificate holder for the service area has**
7 **demonstrated substandard performance.**

8 Community Ambulance is not alleging that the services provided by any
9 Intervenor is “substandard” as that term is defined by statute and regulation;
10 however, it will be clear from the evidence and testimony presented at the hearing
11 that the needs of one of the largest health care systems and its patients are not
12 being adequately met by the current ambulance providers in Maricopa County.
13 While these issues identified may not rise to the level of “substandard
14 performance” as defined, certainly the service is insufficient, and negatively
15 impacts patient care.

16 **5. Conclusion**

17 Under the applicable statutes, regulations and rules set forth above, the
18 record in this matter will show that Community Ambulance is fit and proper and
19 that issuing Community Ambulance a CON will benefit the public and fill a public
20 need in Maricopa County for an additional interfacility and convalescent
21 ambulance service.

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23 RESPECTFULLY SUBMITTED this 15th day of October 2018
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in accordance with Case Management Order No. 1.

/s/ Brendan Murphy