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15 IN THE OFFICE OF ADMINISTRATIVE HEARINGS

16 In the Matter of:

17 RBR Management LLC, dba Community  
18 Ambulance,

19 Applicant.

20 Case No.: 2017-EMS-0104-DHS  
21 (EMS No. 0283)

22 **ADHS/BEMSTS'S LIMITED  
23 PROPOSED FINDINGS OF  
24 FACT AND CONCLUSIONS  
25 OF LAW**

26 (Assigned to the Honorable  
27 Tammy Eigenheer)

28 The Arizona Department of Health Services (“ADHS”), Bureau of Emergency  
29 Medical Services and Trauma System (“BEMSTS” or “the Bureau”), through  
30 undersigned counsel, hereby files its Limited Proposed Findings of Fact and  
31 Conclusions of Law in the above-captioned matter.

32 **PROPOSED FINDINGS OF FACT**

33 **COMMUNITY’S APPLICATION PROCESS FOR INITIAL CON**

34 1. The Applicant, RBR Management LLC, dba Community Ambulance  
35 (“Community Ambulance” or “Applicant”), entered into a Joint Venture Agreement  
36 with Dignity Health to apply for a Certificate of Necessity (“CON”) to provide  
37 ambulance services in Arizona.<sup>1</sup> ADHS 1-0004.

38 <sup>1</sup> Exhibits referenced throughout are referred to using the prefix system established for

1           2.     Community Ambulance filed an application for an initial CON with  
2 BEMSTS on June 10, 2016, to provide interfacility and convalescent transports within  
3 the proposed service area. ADHS 1-0004; -0009.

4           3.     On June 28, 2016, BEMSTS sent an administratively complete notice  
5 stating that the application was found to be administratively complete and the Bureau  
6 would begin the substantive review process. ADHS 2.

7           4.     On August 4, 2016, BEMSTS requested additional information as part of  
8 the substantive review process. ADHS 3.

9           5.     On September 28, 2016, the Applicant sent its responses to the questions  
10 from the substantive review process. ADHS 4.

11          6.     On November 3, 2016, BEMSTS requested additional information as part  
12 of the substantive review process. ADHS 6.

13          7.     On November 14, 2016, the Applicant sent its responses to the questions  
14 from the substantive review process. ADHS 7.

15          8.     On January 10, 2017, BEMSTS issued its' Findings Letter regarding the  
16 Applicant's initial proposed rates and charges for its ambulance service. After  
17 conducting an analysis, BEMSTS recommended slightly higher proposed rates for  
18 A.L.S. (\$898.52 to \$880.08) and B.L.S. (\$801.73 to \$783.95) than those proposed by  
19 the Applicant, and a slightly higher standby rate than the proposed rate by the Applicant  
20 (\$200.43 to \$195.99). BEMSTS also recommended a slightly lower mileage  
21 reimbursement rate than the rate proposed by the Applicant (\$13.52 to \$15.80). ADHS  
22 8-0003.

23          9.     On January 25, 2017, the BEMSTS sent an email to the Applicant  
24 requesting a response to the Findings Letter. ADHS 9.

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27 this CON hearing: ADHS' Exhibits: ADHS #. Exhibit page numbers will only be  
28 referenced when necessary. Hearing Transcript citations will only reference the page(s)  
where the evidence appears.

1           10. On February 28, 2017, the Applicant sent a letter response disagreeing  
2 with the BEMSTS analysis and requesting that it be allowed to join the Phoenix  
3 Uniform Rate Group and have its initial rates and charges set accordingly. The  
4 Applicant pledged to provide an amended ARCR to support its request. ADHS 10.

5           11. On March 8, 2017, the BEMSTS responded by email to the Applicant's  
6 disagreement with the Findings Letter and remained noncommittal about doing another  
7 rates and charges analysis. ADHS 11.

8           12. On March 27, 2017, the Applicant submitted a letter updating the  
9 BEMSTS on its request to amend its initial proposed rates and charges to those adopted  
10 by the Phoenix Uniform Group and included an amended ARCR to show updated  
11 financials under the Phoenix Uniform Group's rates and charges. ADHS 12.

12           13. On April 6, 2017, the Applicant sent a letter to the BEMSTS Bureau  
13 Chief confirming its request to join the Phoenix Uniform Rate Group established by the  
14 Director and to have its initial rates and charges mirror those of that group. ADHS 25.

15           14. On May 3, 2017, the BEMSTS issued a second Findings Letter  
16 addressing the Applicant's proposed amended initial rates and charges. After  
17 conducting an analysis, BEMSTS recommended higher proposed rates for A.L.S.  
18 (\$1,020.23 to \$898.56) and B.L.S. (\$913.73 to \$800.41) than those proposed by the  
19 Applicant, and a higher standby rate than the proposed rate by the Applicant (\$228.43  
20 to \$200.10). BEMSTS also recommended a lower mileage reimbursement rate than the  
21 rate proposed by the Applicant (\$11.04 to \$18.63). ADHS 13-0003.

22           15. On May 8, 2017, the BEMSTS received a letter from the Applicant  
23 disagreeing with the BEMSTS analysis of its amended rates and charges, and  
24 requesting the setting of a hearing where the parties could present their analysis for the  
25 ALJ and the Director. ADHS 14.

26           16. On May 25, 2017, the Applicant sent an email to BEMSTS confirming  
27 the proposed service area description to be the geographic boundaries of Maricopa  
28 County. ADHS 16.

1           17. Pursuant to Arizona Revised Statutes (“A.R.S.”) § 36-2201(11), a CON is  
2 a certificate that is issued to an ambulance service by ADHS and that describes the  
3 following information:

- 4           a. Service area.
- 5           b. Level of service.
- 6           c. Type of service.
- 7           d. Hours of operation.
- 8           e. Effective date.
- 9           f. Expiration date.
- 10          g. Legal name and address of the ambulance service.
- 11          h. Any limiting or special provisions the Director prescribes.

12           18. The Applicant’s proposed service area includes the entire geographical  
13 boundaries of Maricopa County. ADHS 1, 16.

14           19. The Applicant’s proposed service area overlaps the service areas covered  
15 by multiple ambulance providers: the City of Phoenix ETS (CON #76), all service  
16 areas covered by American Medical Response of Maricopa, LLC and its subsidiaries:  
17 Canyon State Ambulance (CON # 58), Southwest Ambulance and Rescue of Arizona  
18 (CON #66), Lifeline Ambulance Service (CON # 62), Southwest Ambulance Maricopa  
19 (CON # 86), Rural/Metro Corp. – Maricopa (CON # 109), Com Trans Ambulance  
20 Service, Inc. (CON # 46), Professional Medical Transport, Inc. (CON # 71), American  
21 Ambulance (CON # 75, ABC Ambulance, LLC (CON # 139), American Medical  
22 Response of Maricopa, LLC (CON # 136), and Gilbert Fire and Rescue Department  
23 (CON # 104), Queen Creek Fire and Medical Department (CON # 144), Gila Bend  
24 Rescue Ambulance (CON # 78), Daisy Mountain Fire District (CON # 105), Buckeye  
25 Valley Volunteer Fire District (CON # 8), Black Canyon Fire Department (CON #  
26 121), Mesa Fire and Medical Department (CON # 140), Sun Lakes Fire District (CON  
27 # 12), Surprise Fire and Medical Department (CON # 140), Tempe Fire Medical  
28

1 Rescue (CON # 148), Rio Verde Fire District (CON # 143), and North County Fire and  
2 Medical District (CON # 114). ADHS 1, 16.

3 20. The BEMSTS received letters of support prior to the start of the hearing  
4 from the following entities: Chandler Fire, Tempe Fire, Mesa Fire, Town of Gilbert,  
5 Avondale Fire, Arizona General Hospital, Phoenix Fire, and the Daisy Mountain Fire  
6 District. ADHS 17-24.

7 21. The Applicant's proposed type of ambulance service is limited to non-911  
8 interfacility and convalescent ambulance transports. The Applicant's ARCR reflects  
9 only Dignity-related transports. ADHS 1- 0004, -0009; Hr'g Tr. at 1176.

10 22. Unlike 911 or immediate response calls, interfacility and convalescent  
11 transports are, by definition, scheduled transports. Scheduled transports are ambulance  
12 transports that are prearranged and do not require an immediate dispatch and response.  
13 See A.A.C. R9-25-901(25), (12), (39).

14 23. The Director of ADHS created Guidance Document "GD-099-PHS-EMS:  
15 Certificates of Necessity for Ambulance Service" in order to provide a resource for  
16 providers and the public on the State's CON program. ADHS 15. The Guidance  
17 Document contains the following principles:

18 • The EMS statutes and rules ensure that all residents of  
19 Arizona have access to ambulance service, whether they live in an urban  
20 or rural area of the state. ADHS 15-0001.

21 • The EMS statutes and rules seek to ensure that ambulance  
22 services have sufficient financial strength and volume of business to  
23 continue operations in a reliable manner. ADHS 15-0001.

24 • A common misconception is that the statutes and rules are  
25 designed to solely limit the number of ambulance services in Arizona. In  
26 fact, portions of the state have multiple providers with overlapping service  
27 areas. However, the statutes and rules do require that a new applicant for  
28 ambulance service must be able to demonstrate that there is a public

1 necessity for the proposed service and that protections are in place for  
2 citizens living in rural areas. ADHS 15-0001.

3 24. In the Guidance Document, the Director identified additional principles  
4 related to how specific information on establishing public necessity is evaluated under  
5 A.A.C. R9-25-903, including:

6 • That the primary focus should be on the best interests of the  
7 public and not upon protecting the interests of current providers in the  
8 area, although the impact on current providers and on the public are  
9 factors to be considered. ADHS 15-0002.

10 • That the determination of public necessity should primarily  
11 focus on analyzing the needs of the community, the adequacy of the  
12 current services provided, an Applicant's ability to maximize the use of  
13 contemporary EMS protocols that have been demonstrated to save lives,  
14 and ensuring cost controls. ADHS 15-0002.

15 • The Director has also identified additional, relevant criteria  
16 to be considered as part of the public necessity evaluation: 1) a plan for a  
17 robust, on-going benchmarking and performance improvement process  
18 that encompasses all components of the EMS system from emergency  
19 medical dispatch through emergency department arrival; 2) a plan to  
20 collect and submit electronic patient care reports consistent with BEMSTS  
21 guidelines; 3) a plan to adopt clinical guidelines and operating procedures  
22 for time sensitive illness consistent with best practice guidelines; 4) a plan  
23 to initiate guideline-based pre-arrival instructions for all callers accessing  
24 9-1-1 for assistance; 5) evidence of regular attendance and participation in  
25 meetings of the regional and State EMS Councils; 6) a plan to ensure that  
26 ambulance service will be maintained and improved for rural communities  
27 and county islands; 7) assurance that the service model will be cost  
28 effective and not result in higher ambulance rates; 8) an assessment of the

1 impact of a successful application on individuals living within and in rural  
2 and wilderness areas adjacent to the requested service area, and  
3 Applicant's plan to address that impact; 9) an assessment of the financial  
4 and operational impact of a successful application on the ability of an  
5 existing CON holder to serve residents within and living in rural and  
6 wilderness areas adjacent to the CON service area requested; and 10) a  
7 plan to ensure continued ambulance service in rural and wilderness areas  
8 should the current CON holder be unable to serve those areas. ADHS 15-  
9 0002/0003.

10 25. The Guidance Document also states that an Applicant can propose to  
11 provide 'Interfacility Arrival Times' if the Applicant wants those times to be measured  
12 by ADHS for compliance purposes. ADHS 15-0004.

13 26. The Applicant did not request the setting of 'Interfacility Arrival Times'  
14 through the application process. ADHS 1. Hr'g Tr. at 1178-1179.

### 15 **THE ADMINISTRATIVE HEARING**

16 27. On June 1, 2017, ADHS issued a Notice of Hearing, and Administrative  
17 Law Judge ("ALJ") Tammy Eigenheer was appointed to hear the evidence and issue  
18 Recommended Findings of Fact and Conclusions of Law at the end of the hearing. The  
19 Notice of Hearing set forth the issues for hearing. Notice of Hearing ("NOH"),  
20 Electronic Case file Document Number 2.

21 28. On June 14, 2017, the AMR CON Holders filed a Petition for  
22 Intervention because they are a current provider of ambulance services in the  
23 Applicant's requested service area. On June 19, 2017, the Bureau filed a response  
24 stating no objection to intervention by the AMR CON Holders, and the Applicant filed  
25 a response objecting to intervention on June 22, 2017. Additional filings were  
26 submitted by AMR and the Applicant on this issue.

27 29. Intervention was granted on February 16, 2018. Case Management Order  
28 No. 4.

1           30. On June 14, 2017, Maricopa Ambulance, LLC filed a Petition for  
2 Intervention because they are a current provider of ambulance services in the  
3 Applicant's requested service area. On June 19, 2017, the Bureau filed a response  
4 stating no objection to intervention by the Maricopa Ambulance, LLC.

5           31. Intervention was granted on February 16, 2018. Case Management Order  
6 No. 4.

7           32. On June 29, 2017, ABC Ambulance, LLC filed a Petition for Intervention  
8 because they are a current provider of ambulance services in the Applicant's requested  
9 service area. On July 10, 2017, the Bureau filed a response stating no objection to  
10 intervention by the ABC Ambulance, LLC.

11           33. Intervention was granted on February 16, 2018. Case Management Order  
12 No. 4.

13           34. On July 17, 2017, Dignity Health filed a Motion to Intervene.

14           35. Dignity Health's Motion to Intervene was denied on February 16, 2018.  
15 Case Management Order No. 4.

16           36. The nine day hearing was held October 22, 2017 through October 25,  
17 2017, and November 5, 2017 through November 8, 2017. Hr'g Tr. at 1, 264, 565, 857,  
18 1128, 1380, 1615, 1905, 2197.

19           37. During the hearing, the Applicant, the Bureau, AMR, Maricopa  
20 Ambulance, and ABC Ambulance presented evidence through witnesses and exhibits.

21           38. During the hearing, the Applicant's CEO testified that Community  
22 Ambulance would focus on Dignity-related transports but would be available as an  
23 overflow or backup provider to non-Dignity-related persons. Hr'g Tr. at 1177-1178.

24           39. During the hearing, the Applicant's CEO testified that the Applicant  
25 would seek the setting of 'Interfacility Arrival Times' if their application was  
26 successful. Hr'g Tr. at 1179.

27           40. The Applicant did not put on a rebuttal case. Hr'g Tr. at 2389-2390.  
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1 **PROPOSED CONCLUSIONS OF LAW**

2 1. This administrative hearing was held under the authority of, and pursuant  
3 to, A.R.S. §§ 36-2234 and 41-1092, *et seq.*, and A.A.C. R2-19-101, *et seq.*

4 2. The Applicant has the burden to prove, by a preponderance of the  
5 evidence, that the proposed CON should be granted. A.A.C. R2-19-119.

6 3. The Director and ADHS have jurisdiction over ground ambulance services  
7 under Arizona Revised Statutes Title 36, Chapter 21.1, Article 2 and A.A.C. Title 9,  
8 Chapter 25, Articles 9-11.

9 4. The Legislature, through the enactment of the CON statutes, mandated a  
10 fully regulated ambulance industry. ADHS, through BEMSTS, regulates ambulance  
11 services in the State of Arizona, including the CON application process and the CON  
12 renewal process. *See* A.R.S. §§ 36-2232 through -2246.

13 5. In addition to the statutory framework, the ADHS adopted rules to  
14 regulate ambulances and ambulance services. *See* A.A.C. R9-25-901 through -1110.

15 6. Any entity that wants to operate an ambulance in the State of Arizona may  
16 do so only after being granted a CON by ADHS. A.R.S. § 36-2233.

17 7. A.R.S. § 36-2233 governs the issuance of a CON for the operation of  
18 ambulance services in this State, and requires, in pertinent part:

- 19 a. That a CON applicant must apply for a CON on forms prescribed by the  
20 Director. A.R.S. § 36-2233(A); and  
21 b. That a CON applicant must demonstrate that public necessity requires the  
22 proposed service or any part of the service. A.R.S. § 36-2233(B)(2); and  
23 c. That a CON applicant must demonstrate that it is fit and proper to provide  
24 the service. A.R.S. § 36-2233(B)(3).

25 8. A.A.C. R9-25-902 outlines the application requirements for a CON.

26 9. Public necessity means “an identified population needs or requires all or  
27 part of the services of a ground ambulance service.” A.A.C. R9-25-901(33).

28

1           10.   A.A.C. R9-25-903 establishes factors for evaluating whether public  
2 necessity exists for the requested service.

3           11.   In determining public necessity, the Director shall also consider any  
4 information introduced at hearing on the applicable factors of A.A.C. R9-25-903. The  
5 failure to provide information on any factors identified in this rule does not, by itself,  
6 constitute grounds to deny the application. A.A.C. R9-25-903.

7           12.   Further guidance on public necessity can be found in Guidance Document  
8 GD-099-PHS-EMS. ADHS 15.

9           13.   Fit and proper means that the director determines that an applicant for an  
10 initial CON has the requisite expertise, integrity, fiscal competence, and resources to  
11 provide the proposed ambulance service in the requested service area. A.R.S. §36-2201  
12 (21).

13           14.   The Director has the authority to determine, fix, alter, and regulate just,  
14 reasonable and sufficient rates and charges for the provision of ambulances, including  
15 rates and charges for ALS service, BLS service, mileage, standby waiting, subscription  
16 service contracts and other contracts related to the provision of ambulance services.  
17 A.R.S. § 36-2232(A)(1); A.R.S. § 36-2239; A.A.C. R9-25-1101, *et seq.*

18           15.   Uniform rates can be set by the Director for overlapping CON holders  
19 who voluntarily seek to operate in the common service area under the same rates and  
20 charges. A.R.S. § 36-2232E.

21           16.   The Director may consider any other information or documents that may  
22 assist in evaluating the application or the proposed rates and charges. A.A.C. R9-25-  
23 902(A)(4); A.A.C. R9-25-1101(A)(10).

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DATED this 28th day of January, 2019.

Mark Brnovich  
Attorney General

By /s/ Kevin D. Ray  
Kevin D. Ray  
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*Attorney for BEMSTS*

**CERTIFICATE OF SERVICE**

**ORIGINAL** filed using the OAH electronic document filing system <https://portal.azoah.com/oedf> this 28th day of January, 2019, with copies provided to all parties on the approved mailing list this 28th day of January, 2019, by posting through the designated OAH website at <https://portal.azoah.com/oedf/documents/2017-EMS-0104-DHS/index.html>.

By: /s/ Koren Lyons

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