Ronna L. Fickbohm (SBN 010869)
FLETCHER STRUSE FICKBOHM & WAGNER PLC
6750 N. Oracle Road
Tucson, Arizona 85704
Telephone: (520) 575-5555
rfickbohm@tucsontrusts.com

and

Paul McGoldrick (SBN 010383)
SHORALL MCGOLDRICK BRINKMANN
1232 E. Missouri Ave.
Phoenix, AZ 85014-2912
paulmcgoldrick@smbattorneys.com

Attorneys for Intervenors – AMR CON Holders

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of: **RBR Management LLC, dba Community Ambulance** Applicant.	Docket 2017-EMS-0104-DHS (EMS No. 0283) **AMR CON HOLDERS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND RECOMMENDED DECISION** (Assigned: The Hon. Tammy Eigenheer)

Intervenors, American Medical Response of Maricopa, LLC dba . . . (CON 136); R/M Arizona Holding, Inc. dba Canyon State Ambulance dba . . . (CON 58); Life Line Ambulance Service, Inc. (CON 62); Rural/Metro Corp.-Maricopa dba . . . (CON 109); and Professional Medical Transport, Inc. dba PMT Ambulance dba . . . (CON 71) ("AMR CON Holders"), pursuant to Case Management Order No. 7, hereby submit their Proposed Findings of Fact and Conclusions of Law, and Recommended Decision.

Hearing: October 22 – 26, 2018; November 5 – 8, 2018.

Appearances: RBR Management LLC, dba Community Ambulance ("RBR", "Community Ambulance" or "Applicant") appeared through attorneys Jeffrey Meyerson and Brendan Murphy. The Arizona Department of Health Services' ("ADHS" or "Department") Bureau of Emergency Medical Services and Trauma Systems ("BEMSTS" or "Bureau") appeared through Assistant Attorney General Kevin Ray. Intervenor ABC Ambulance, LLC ("ABC") appeared through attorney Adriane Hofmeyr. Intervenor Maricopa Ambulance, LLC ("Maricopa Ambulance") appeared through attorney James Belanger. The intervening AMR CON Holders (above) appeared through attorneys Ronna Fickbohm and Paul McGoldrick.

Administrative Law Judge: The Honorable Tammy Eigenheer

Evidence and testimony having been presented at the hearing in this matter and considered by the Administrative Law Judge; all interested parties having been given a full opportunity to present their positions, evidence and proposed Findings of Fact and Conclusions of Law; and based upon the entire record and applicable law, the AMR CON Holders submit that the following Findings of Fact and Conclusions of Law, and recommended Decision, should be entered by this Office:

BACKGROUND INFORMATION AND HEARING ISSUES

1. On or about June 1, 2017, ADHS (through its Director – "Director") caused the Notice of Hearing to be issued in this matter ("Notice of Hearing"), setting a hearing on RBR's application for issuance of a Certificate of Necessity ("CON") for hearing on July 26, 2017.

2. RBR is majority interest (50.1%) owned by Dignity Health ("Dignity"), formerly known as Catholic Healthcare West, and minority interest (49.9%) owned by a Nevada entity– Ambulance Management Group, LLC. ADHS-7-0011 and 0040.

3. On February 16, 2018, by way of Case Management Order No. 4, ABC, Maricopa Ambulance, and the AMR CON Holders were granted intervening party status. Dignity's Motion to Intervene was denied. The hearing was ultimately rescheduled to commence on October 22, 2018 (Case Management Order No. 5).

4. RBR seeks unlimited authority to provide any non-911 ambulance transport service within Maricopa County. Pursuant to the Notice of Hearing, the Applicant has requested that the Director issue it an initial CON, authorizing it to provide non-911, Advance Life Support ("ALS") and Basic Life Support ("BLS") ambulance transport services 24 hours per day, 7 days per week. The Application is for ONLY scheduled, interfacility, and convalescent ambulance transports. The Applicant's proposed service area is defined as the area within the entire geographical boundaries of Maricopa County. Neither by way of the Notice of Hearing nor by way of its entire application package [including all communications regarding the application with the Bureau subsequent to submission of the initial application (ADHS-1-0025)[1] – hereafter referred to collectively as "Application"] did RBR propose that the applied for CON include any interfacility arrival times that would be tracked and measured for compliance purposes by ADHS[2].

5. On February 25, 2015, American Medical Response of Maricopa, LLC ("AMR of Maricopa") was granted authority to do ambulance transports (both 911/immediate and scheduled/interfacility/convalescent transports). *See*, 2014A-EMS-0305-DHS. AMR Maricopa holds CON 136, which currently authorizes it to perform scheduled/interfacility/convalescent transports anywhere in Maricopa County, and provides it with broad authority and responsibility for 911/immediate transports in Maricopa County and portions of Pinal County, with some fire district exceptions. AMR-4E and 5E.

6. Subsequent to February 2015, CONs with service areas in Maricopa County were issued to the following entities in the listed month/year: Superstition Fire & Medical District (March 2015), ABC Ambulance (May 2015), City of Mesa (July 2015), Surprise Fire & Medical Dept. (August 2015), Rio Verde Fire District (November 2015), Gilbert Fire & Rescue

---

[1] Exhibits will be referred to using the format of ADHS-1, AMR-1, CA-1, and MA-1.

[2] *See* also, Reporter's Transcript, V1, 11:24 – 12 (the Reporter's Transcript of proceedings in this matter will be referred to be "RT", volume and page number followed by line numbers).

Dept. (February 2016), Queen Creek Fire & Medical Dept. (March 2016), Sun City (May 2016), Peoria (June 2016), and Maricopa Ambulance (September 2016). AMR-8.

7. On January 26, 2016, ADHS authorized an American Medical Response, Inc. ("AMR") affiliate - AMR HoldCo - to operate/manage and control Arizona CON holders that were previously operated/managed and controlled by the Rural/Metro Corporation. 2016A-EMS-0145-DHS. This included seven CON holders with service areas located within or overlapping into Maricopa County, as follows: CON 46 (ComTrans Ambulance Service, Inc.), CON 58 (Canyon State Ambulance), CON 66 (Southwest Ambulance & Rescue of Arizona), CON 71 (Professional Medical Transport, Inc. – "PMT"), CON 75 (American Ambulance), CON 86 (Southwest Ambulance Maricopa), and CON 109 (Rural/Metro Corp – Maricopa). *Id*., *see* also, AMR-4A, 5A, and 7A through E. While all of these previously Rural/Metro affiliated CONs were in existence and sought intervening party status at the time the Notice of Hearing issued (OAH Document No. 5, Motion for Intervening Party Status – Multiple AMR CON Holders . . .), in November 2017 CONs 46 and 75 were consolidated into CON 71 (PMT) and CONs 66 and 86 were consolidated into CON 136 (AMR Maricopa). AMR-6A and B. As such, CONs 46, 75, 66 and 86 are no longer intervening parties. The intervening AMR CON Holders are American Medical Response of Maricopa, LLC dba . . . (CON 136); R/M Arizona Holding, Inc. dba Canyon State Ambulance dba . . . (CON 58); Life Line Ambulance Service, Inc. (CON 62); Rural/Metro Corp.-Maricopa dba . . . (CON 109); and Professional Medical Transport, Inc. dba PMT Ambulance dba . . . (CON 71)

8. As defined by the Notice of Hearing the following issues related to the Application proceeded to hearing in this matter:

a. Whether public necessity requires the service or any part of the service proposed by the Applicant, and if such service would be in the public's best interest, as required by A.R.S. §36-2233(B)(2), and A.A.C. R9-25-903. Additionally,

- The impact of a successful application on individuals living in rural and wilderness areas adjacent to the service area requested and Applicant's plan to address that impact. *See*, A.A.C. R9-25-903(A)(6).
- The impact of a successful application on the financial and operational ability of an existing CON holder to serve residents living in rural and

wilderness areas adjacent to the CON service area requested. *See*, A.A.C. R9-25-903(A)(6).

- Applicant's plan to ensure continued ambulance service in rural and wilderness areas should the current CON holder be unable to serve those areas. *See*, A.A.C. R9-25-903(A)(6).

b. Whether the Applicant is fit and proper to provide the services proposed, as required by A.R.S. §36-2233(B)(3) . . .

c. Whether the Applicant's proposed service area [all of Maricopa County] is in the best interests of the public, or if some other service area should be granted by the Director . . ., as required by A.R.S. §§36-2232(A)(3), 36-2233(B)(2), 36-2233(E), A.A.C. R9-25-902 and -903.

d. The Notice of Hearing identified existing CON providers with service areas that would be overlapped by the service area requested by RBR. Currently, this group includes the five AMR CON Holders that are currently intervening parties, ABC and Maricopa Ambulance, the seven governmental entity CONs issued after February 2015 (noted above in ¶5), and governmental entity CONs issued prior to February 2015 – CON 76 (City of Phoenix), CON 78 (Gila Bend), CON 105 (Daisy Mountain), CON 8 (Buckeye Valley), CON 121 (Black Canyon), CON 12 (Sun Lakes), CON 148 (Tempe), and CON 114 (North County).

e. Whether the Applicant's proposed rates and charges . . . should be granted by the Director . . . as required by A.R.S. §§36-2232(A)(1) and 36-2239; A.A.C. R9-25-902, -903 and -1101, *et seq.* The Applicant has requested to participate in the uniform rate group of Phoenix.

f. Whether the type and level of service proposed by the Applicant is in the best interest of the public, as required by A.R.S. §36-2201(11)(b) – (c); A.A.C. R9-25-903(A)(4), (B), (C), and R9-25-901(26) and (51).

g. Whether the Applicant has addressed the necessary information set forth in A.A.C. R9-25-902 and as required by A.R.S. §36-2233.

h. If the CON is approved, will RBR use e-PCR technology?

i. If the CON is approved, will RBR submit e-PCR data to the AZ-PIERS system?

j. If the CON is approved, will RBR fully participate in the Premier EMS Agencies program?

k. If the CON is approved, will RBR fully participate in BEMSTS quality improvement initiatives including but not limited to SHARE and EPIC-TBI?

l. If the CON is approved, will RBR have at least one (1) manager attend and participate in the Arizona Emergency Medical Services Council, in Arizona's Central Region Council (Arizona Emergency Medical System), and in the Arizona Ambulance Association?

9. All of the intervening parties have submitted their positions that the Application should not be granted, primarily based upon the Applicant's failure of proof with regard to the public necessity/public's best interest portions of its burden of proof. No formal position has been taken by the intervening parties with regard to the "fit and proper" element of the Applicant's burden of proof; however, none have endorsed or conceded this aspect, which along with the other items listed in ¶8 does remain a matter Applicant is responsible for supporting with competent evidence. At least some of the intervening parties have taken the position that there is defect with regard to the applying entity (that RBR's own Operating Agreement does not authorize it to conduct business in Arizona). The Bureau recommends different rates and charges, based upon its two financial analyses, than those Applicant proposed.

FINDINGS OF FACT; APPLICANT'S CASE-IN-CHIEF

In support of its burden of proof, the Applicant called the following witnesses[3] and introduced the following exhibits (in chronological order):

[3] For this Office's convenience, an Index to Witnesses' Testimonies is provided at the very conclusion of this document.

10. ***Rod A. Davis***, who operated the Catholic Healthcare West Hospital System (now known as Dignity Heath, or "Dignity") in Las Vegas between 1991 and his retirement in 2014 (RT V1, beginning at 20:14).

a. Davis's testimony included the admission of the following exhibits: CA-172 and 184; AMR-74; and ABC-2 and 33.

b. Mr. Davis testified that as a result of rapid population growth outpacing development of medical facilities, between the mid 1990's and early 2000's, Dignity experienced patient overcrowding at its one Las Vegas hospital, meaning patients had extended wait times for beds, so it built another hospital. RT V1, 21:14-25:25; 43:14-19.

c. Patients were then still waiting as much as twenty hours to be moved, including waiting in the hallways of hospitals, so Dignity and Ambulance Management Group created RBR Management, LLC dba Community Ambulance to transfer patients from the busier hospital to the other Dignity hospital as "convenience transfers," at Dignity's expense. *Id*., 27:24-34:18; 65:3-22.

d. RBR was formed to do just these non-911 transports, but ultimately expanded to also do emergency (911) transports. *Id*., 41:10-18.

e. The initial goal of RBR was to figure out how to move patients between Dignity hospitals, but Dignity and RBR "continued to look for opportunities down the road," such as transfers for other organizations/facilities. *Id*., 43:20-45:7.

f. Davis supported Brian Rogers' and Rob Richardson's knowledge of the Nevada ambulance industry. *Id*., 38:14-39:18.

g. Davis has no familiarity with the greater Phoenix metropolitan area or Arizona's ambulance regulatory model. *Id*., 40:1-5.

h. Las Vegas uses an ambulance service franchise model, where the County grants franchises for specific operational areas. *Id*., 40:17-23.

i. Dignity did get in trouble with the State about some of the Dignity "convenience" transfers. The State concluded the hospitals were

improperly transferring patients, in a systematic fashion, to the area's only public hospital, shifting the cost of providing treatment to these lower non-paying patients to the public. *Id*., 45:15-46:7; AMR-74. The same patient transfer controversy served as the basis for a wrongful termination lawsuit filed by two doctors against Dignity. *Id*., 57:15-60:3; ABC-2.

j. The vast majority of Dignity patients came to the hospitals Davis ran by some means other than ambulance; the concerns about patient delays that led to the formation of RBR were in major part due to hospital staffing issues. *Id.*, 47:21-49:9.

k. Davis had no information about any overcrowding at any Dignity facility in Maricopa County. *Id*., 51:16-19.

11. ***Linda Hunt*** is the President and CEO of Dignity Health in Arizona. RT V1, 68:4-7.

a. During Linda Hunt's testimony, the following exhibits were admitted into evidence: CA-17, 24, 121, 135, 183, and 185; MA-17; ABC-20, 24, 25, 28, and 53; ADHS-1 and 12; and AMR-12A.

b. Dignity's Arizona network is anchored by three Maricopa County hospitals. In fiscal year 2017, Dignity's revenue was approximately $2.1 billion, with a combined EBITDA of approximately $94 million. "Under Linda Hunt's leadership, Dignity Health in Arizona has grown rapidly . . ." Through "dramatic organic growth" and "robust strategic partnerships," Dignity is now "a far-reaching and ***dominant*** healthcare system." CA-135, p. 1 (emphasis added).

c. For her major accomplishments, Linda Hunt first lists the fact that she "[a]ggressively grew Dignity Health's presence in the Arizona market with broad expanse of Dignity Health medical facilities and strategic partnerships . . ." She lists urban and suburban Maricopa County facilities in support of this; none outside of the urban / suburban

Maricopa County area are identified, not to mention the absence of any mention of rural or wilderness area healthcare accomplishments. *Id*., p. 2.

d. Dignity's tremendous growth in Arizona under Hunt's leadership, is attributed by Hunt, at least in part, to "strategic partnerships." Hunt would like to see Dignity have "continued rapid growth" in Arizona, with strategic partners. *Id*., 117:25-119:14; CA-135.

e. Dignity has a 20% ownership interest in Phoenix Children's Hospital. *Id*., 123:10-17. An RBR CON might be used to pick up patients at Phoenix Children's Hospital. *Id*., 126:14-17.

f. Hunt was unwilling to agree that a RBR CON limited to servicing Dignity facilities would be sufficient to address what Dignity wants. *Id*., 125:8-126:13.

g. Just because Dignity is a not-for-profit entity does not mean that Hunt is not interested in expanding its revenue footprint. *Id*., 147:5-13.

h. Once the Adeptus facilities joined Dignity, in November 2014, and Dignity started operating freestanding emergency rooms, it struggled to get non-emergent patients transferred, which became more of an issue in early 2015. *Id*., 69:10-18. The issues raised to her (delays in transporting patients) were similar to what Rod Davis testified had happened in Nevada. *Id*., 144:1-9.

i. After Jeff O'Malley and a Dignity hospital president brought this to her attention, she called a meeting to discuss strategies. Jeff O'Malley was tasked with finding solutions. *Id*., 69:21-70:2; 71:12-72:8; 72:16-73:2.

j. With regard to the timeliness of ambulance transport concerns, Hunt was unable to identify who made the complaints. She said the complaints were from 2014 into early 2015, perhaps into June 2015. All information was brought to her by others (not the complaining party). *Id*., 153:5-154:19. Hunt had no specifics about any of these complaints, instead referring to "a transportation log." *Id*., 154:24-155:1.

k. Hunt did not speak to any of the AMR CON Holders about these complaints. *Id*., 155:20-21.

l. Hunt cannot recall who the primary ambulance transport companies were in late 2014/early 2015. *Id*., 72:9-15.

m. Hunt was aware of the RBR joint venture model in Nevada and approved pursuit of that in Maricopa County. *Id*., 74:24-75:11.

n. Hunt signed the Dignity contract with AMR on November 1, 2015. *Id*., 142:11-19; CA-24.

o. Dignity currently has approximately 74 facilities in Arizona – 7 acute care hospitals, 10 freestanding emergency rooms ("ER"), 4 urgent care centers, 34 physician clinic locations and other entities. Of that 74, 33 are done via joint ventures. *Id*., 75:13-76:3.

p. There are also new Dignity facilities in the works – a 50 bed facility at Arizona General Mesa Hospital, an expansion of Mercy Gilbert, an expansion of the Chandler Hospital, the addition of two more freestanding emergency departments ("ED") to complement the Mesa hospital (in Tempe and Surprise), and Dignity intends to continue looking for other freestanding ED locations. *Id*., 76:10-24.

q. Dignity asked RBR what it could do for Dignity in Arizona, with regard to interfacility transports ("IFT"). The RBR contract with Dignity Health (CA-17) "was a result of what that conversation ended in." *Id*., 87:2-17. This contract will go into effect if RBR gets a CON. *Id*., 87:18-24.

r. That agreement (CA-17) at ¶29(a) has the response (arrival) times (for IFTs) that are important to Dignity. *Id*., 89:7-90:19.

s. Pursuant to the RBR – Dignity agreement (CA-17), ¶29(a), responses (arrivals) for "urgent" transports are defined as follows: "Response must be immediate and arrive within 30 minutes, zero seconds (30:00) of the requested at-the-bedside pickup time from a licensed healthcare facility." "Non-urgent" transport responses are required as follows: "Unit will arrive within 60 minutes, zero seconds (60:00) of the requested at-the-bedside pickup time . . . Pre-scheduled one (1) hour in advance."

Scheduled transports require "75 minutes advanced notice." These "include a 15 minute window before or after the agreed upon time." Overall, the "[r]esponse time performance expectations are 90+% of the transports in each category of Services. Measurements will be made quarterly." Exceptions to those response times (which will be excluded from the performance metric commitments) include periods of unusual system overload, offload delays at Dignity facilities greater than 30 minutes, severe weather conditions, and late responses due to circumstances not in RBR's control. CA-17, at pp. 10-11, ¶29(a) and (b).

t. Dignity's customer agreement with AMR of Maricopa had the exact same response (arrival) time standards. CA-24, pp. 9-10, ¶28.

u. Dignity has entered into an agreement with Maricopa Ambulance that has essentially the same response (arrival) criteria. However, this does not allow Maricopa Ambulance the same exceptions. Maricopa Ambulance will be required to meet the Dignity arrival criteria without any allowed exceptions, in contrast to the proposed contract with RBR. *Id.*, 93:17-96:19, 97:8-98:1; MA-37; CA-17.

v. Maricopa Ambulance's service area includes all Dignity facilities. *Id*., 106:15-19, 107:20-25.

w. Currently, there are no Maricopa County Dignity facilities west of the 303, south of Queen Creek Road, north of just off the 101/Agua Fria Freeway, or east of Scottsdale Road (in the area north of McDowell Road) or Bush Hwy (south of McDowell). *Id*., 101:12-102:9, 103:17-22; CA-183.

x. Hunt erroneously believed RBR/Community's CON Application was for both Pinal and Maricopa Counties. *Id.*, 103:9-16.

y. Hunt was unaware of the number of ambulance transport companies providing IFT services in Maricopa County, was unaware whether the service area RBR/Community proposes to cover is already covered by existing CONs with IFT authority, and was also unaware what

ambulance transport companies are currently serving Dignity. *Id*., 108:13-109:23; 135:21-23, 178:3-13.

z. All of the RBR – Dignity contract terms can be negotiated with any IFT provider. *Id*., 92:9-20.

aa. With regard to Dignity's stated desire to have its contractors share its philosophies and missions, Hunt acknowledges this is something Dignity "oftentimes" contracts for its subcontractors or joint venture partners to be trained in, and there is "nothing peculiar to Community Ambulance that they're being trained in the Humankindness philosophy of Dignity Hospital." Anyone contracting with Dignity could be required to do that type of training. *Id*., 112:2-113:23.

bb. Dignity's assessment of IFT needs in Maricopa County was limited to Dignity's needs. *Id*., 135:5-9.

cc. Hunt's opinions about RBR are not based upon any personal knowledge, as she has none. *Id*., 136:10-137:11.

dd. Hunt was unaware of any analysis being done of the number of ambulance transports that will be required for those Dignity facilities currently "in the pipeline." *Id*., 144:18-146:22.

ee. Insofar as RBR identified a small number of "mistakes", "errors", or other discrete service complaints, Hunt acknowledges that the fact of the federal government discovering billing errors that led to a corporate integrity agreement, in which Dignity owned the errors the federal government had identified, does not mean that Dignity is a bad system or provides substandard services. *Id*., 83:6-84:8, 147:14-148:22. Additionally, sometimes Dignity employees break hospital or company policies, get disciplined, need more training, or receive customer complaints – some of which are justified. However, none of this means that Dignity provides inappropriate services to its patients. Customer complaints and employee mistakes will happen. *Id*., 148:6-149:11.

ff. With regard to hospital discharges, most patients are discharged by private vehicle. *Id*., 155:23-156:12.

gg. Dignity does have staff to patient ratio it tries to achieve; if an ER is at that ratio, and people are waiting to get in, Dignity contacts its "on call" staff to meet the demand. It is possible patient admission delays will occur in order to maintain the desired staffing ratios. *Id*., 160:12-161:19.

hh. Hunt defines "timeliness of transport" as when someone is discharged at 10:00 a.m. and is still there at 2:00 or 3:00 p.m. *Id*., 161:13-19. Hunt was not able to identify any time in calendar years 2015 through 2018 that the sort of "timeliness" concern she articulated occurred due to no ambulance transport being available. *Id*., 161:20-162:6. RBR did not introduce any evidence showing that type of a delay occurring any time subsequent to any of the intervening parties entering the Maricopa County market and beginning to do IFT transports for Dignity.

ii. Hunt agreed that the Dignity/AMR contract response parameters would be a good measure of timeliness. *Id*., 162:15-19. She did not know whether any of the AMR CON Holders had a systemic problem meeting the contract guidelines. *Id*., 162:20-163:7.

jj. Hunt belongs to Health Systems Alliance, along with other major hospital system representatives (Banner, Tenet, Abrazo, and Honor). However, she never raised at any HSA meeting the fact of Dignity looking to get into the ambulance business through a for-profit joint venture company, she never polled HSA's membership about whether there was any perceived desire for additional private ambulance transport services, and she never even raised the issue less formally with any of these entities. She is unaware of whether any other major health system in Maricopa County would be supportive of RBR's application. *Id*., 164:10-165:22.

kk. Hunt is also unaware of any studies or analyzes of how RBR receiving a CON and taking all Dignity Health transports might impact the Maricopa County public, other hospitals, or existing CON holders. *Id*., 165:23-166:8.

ll. Hunt is not concerned about whether or not the Dignity-RBR financial transactions are all done in an "arms-length" fashion. *Id*., 166:23-167:6.

mm. Hunt agrees that the fact of RBR not offering any contract discounts during its first year of operations (as stated in the pro-forma ARCR it provided as part of its Application) would be not so great for Dignity patients/the public (as there will be no third party payor discounts provided). *Id*., 167:7-171:5; ADHS-12, pp. 12 and 18.

nn. Dignity expects that if RBR receives a CON, RBR will do all Dignity patient IFTs. If Dignity calls RBR, they would need to come and take the patient. *Id*., 178:24-179:7.

oo. If a call comes in for a Dignity transport at a time when there are no RBR ambulances available, it is possible that Dignity will hold a patient for an hour, or even two hours if the patient is stable, so RBR can perform the transport. *Id.*, 171:6-172:20.

pp. A small provider, such as that outlined by the RBR Application, will not operate as efficiently as a larger provider; additionally, bringing in another provider will necessarily result in duplicative infrastructure, which ultimately gets paid for by the public. *Id*., 172:21-173:12.

qq. Hunt claimed that Dignity had patients waiting "multiple hours" "all the time." However, when asked when that last happened, she did not know. She did identify the facility as Laveen, but could not provide any date, again stating, "We have logs of when we call and when people show up." *Id*., 173:17-174:12. No such Dignity logs from the Laveen facility were introduced into evidence by RBR.

rr. Hunt believes a financially stable Dignity system is good for the public. To achieve stability, Dignity depends on a mix of charity care (no reimbursement), reduced reimbursement and high quality reimbursement. If someone targeted Dignity's high quality reimbursements, trying to pull those out of the system, she would be concerned about the impact on Dignity's ability to serve the lower and

no cost patients. *Id*., 174:25-176:6. She agrees the same model applies to ambulance transport providers. *Id*., 176:7-177:3.

ss. Hunt distinguishes Dignity ownership versus "affiliation" by the percentage interest Dignity has in a facility or entity. If that percentage is more than 50%, Dignity owns it. *Id*., 179:5-25.

tt. Jeff O'Malley's involvement in the RBR application is that he is in charge of Dignity's joint venture partnerships. *Id*., 184:15-19.

12. **Jeff O'Malley** is the Vice President for Partnership Integration for Dignity Health in Arizona. RT, V1, 198:15-17. During the course of his testimony, the following exhibits were admitted: CA-13, 32, 126, 179, 193, and 195; ADHS-2 through 11, 13 through 16, and 25; and ABC-6, 30, 41, 42, and 82. O'Malley also testify as follows:

a. O'Malley sits on RBR's Board of Managers (since March 2017). He stated his testimony was given as a Dignity representative, not upon behalf of RBR. RT, V1, 199:7-9; RT, V2, 309:23-310:7.

b. He has no clinical training or experience other than business / managerial (overseeing a cancer center). RT, V1, 200:1-201:13.

c. O'Malley proposes an integrated delivery network, where Dignity "wholly" owns the enterprise, will minimize healthcare system inefficiencies, will lower overall costs of the system, and would be designed to increase quality of care. *Id*., 201:18-202:18. However, he offered no details or specifics about how that would be accomplished if RBR's application for a CON were granted. His example of a joint venture with a third party that included integration of clinical and IT, and cultural integration through training, was not an ambulance transport model and did not explain why third party ambulance providers could not "partner" in integrating clinical practices, training, culture, etc. *Id*., 202:19-204:24.

d. O'Malley's meeting with Linda Hunt in early 2015 was his first foray into assessing ambulance transports in Arizona. *Id*., 206:12-207:12. The context for that was Hunt and the executive team discussing bottleneck and throughput issues, and Hunt saying, "We need an ambulance

solution . . . Our needs are not being met." Hunt charged O'Malley with looking into the issue and told him that she wanted "a very quick response." *Id*., 208:4-208:15.

e. O'Malley related "bottlenecking" to patients needing to be moved so that beds in the emergency department or hospital can open up. *Id*., 208:16-209:23. However, even if ambulance transports are excluded from the equation, the Dignity system would still have bottlenecking and throughput issues unrelated to patient transportation. RT, V2, 432:16-20. O'Malley also acknowledged that the majority of patients leaving Dignity facilities go by way of their own vehicle. *Id., 336:1-8.*

f. O'Malley first learned about RBR's Nevada operations in November 2014. *Id*., 422:23-423:19. Between November 2014 and March 2015, he started looking at how RBR addressed Nevada's patient transport issues. *Id*., 423:21-424:2.

g. The issues Linda Hunt was concerned about, beginning November 2014, were largely tied to Arizona General Hospital (Laveen). *Id*., 422:15-20. O'Malley recognizes that because none of the intervening parties had a CON for Maricopa County at that time, Hunt's concerns involved pre-existing issues with other ambulance providers (not parties to these proceedings). *Id*., 424:16-23.

h. Through at least the spring of 2015, the Rural/Metro organization was providing the Dignity ambulance transports. RT, V1, 228:15-22.[4]

i. O'Malley was told Dignity was "consistently" experiencing delays of 3 to 4 hours at Laveen General Hospital for undefined (urgent versus non-urgent) patients. *Id*., 213:5-215:4.

j. O'Malley did not do anything to evaluate Dignity's Maricopa County patient population (*Id.*, 215:5-12). However, he opined his belief that the market is growing and aging, and he "believes" that will continue.

[4] Mr. O'Malley seemed to be confused about the fact that the Rural/Metro organization and AMR were separate organizations in the spring of 2015. For example, *id.*, 230:7-11.

Id., 215:5-12, 22-23; 216:4-20. This was unaccompanied by any discussion about any attempts by Dignity or RBR to measure Maricopa County ambulance transport growth.

k. O'Malley possessed a distinct lack of information about the Maricopa County ambulance transport system, including:

- he was unable to define the various Dignity facilities' particular reliance on IFTs (*id.,* 217:3-222:2)
- he was not mindful of the differing expense of ambulance transports as between urban and rural areas, (RT, V2, 337:15-338:3)
- he was remarkably uninformed about ADHS's ambulance regulation (for example, *id.*, 357:20-358:14)
- he was unaware of the number of interfacility transports in Maricopa County on an annual basis (*id*., 368:17-369:3)
- he was unaware of the number of IFTs Dignity utilizes that might require a nurse (*id*., 374:11-15)
- he had no idea what convalescent transports are or why a CON holder might be required to do them (*id*., 395:12-396:2)
- he was unaware of the number of ambulance versus non-ambulance transports that Dignity utilizes, even with regard to whether there are more patient transports done by ambulance than non-ambulance (*id*., 435:19-436:1)

l. Dignity did negotiate a contract with AMR Maricopa, under which O'Malley hoped for five dedicated ambulances, which he testified would have been a "great solution;" however, no credible evidence was provided demonstrating how that would have been a solution to any of Dignity's stated concerns. RT, V1, 232:1-5; 232:15-233:6.

m. Although Linda Hunt signed the AMR-Dignity contract in November 2015, O'Malley expressed unhappiness with its terms and contended the performance standards ended up the same as AMR Maricopa had on its CON. *Id*., 234:23-235:23; 238:1-6; CA-24. However, a comparison to AMR Maricopa's current and previous CONs (AMR-4E

and 7F) demonstrates this is not true, as AMR's performance standards there are averaged out over the entire county on an annual basis.

n. With regard to the "one call" provision of the AMR-Dignity contract, O'Malley was unaware whether AMR ever turned to other providers (if it could not do a transport in a timely fashion). *Id*., 240:24-241:3.

o. Quarterly meetings with AMR to review/discuss data required under the contract was an important factor to O'Malley, and he acknowledged he eventually got a standard format for reporting and did receive the reports quarterly. *Id*., 244:4-22; 245:17-23; CA-24, ¶28(f).

p. O'Malley was asked to elaborate upon his knowledge about Dignity facilities' problems with the AMR CON Holders' services, based upon the reporting of others in the organization (comments received via email and phone calls), which he identified as coming from Brandon Heston, Becky Haas, and others who did not testify as witnesses at the hearing, including Dr. Swearingen (who was identified as a potential witness by RBR but who was not called during the hearing). RT, V2, 276:23-278:22. The specific issues related involved arrival times, being told that if a facility needs a faster response to call 911, seeing an ambulance parked across the street and asking why it can't do a transport, unprofessional crews, and inability to get data. *Id*., 278:23-279:10. No detail was provided by O'Malley regarding the number of times any incident might have occurred, at what location, upon what date, whether patient care was impacted or, if there was a claimed "delay," how long that "delay" might have been, how Dignity was measuring "delay," or any other specifics.

q. O'Malley proposed that if RBR were to receive a CON, RBR/Community "will be there" for Dignity, will commit to providing the services Dignity desires "independent of the volume of services that we're receiving" (RBR will be present regardless of whether a facility has very low volume), because he "just knows" this to be true. *Id.*, 308:4-309:5. No facts were elicited during the hearing, from any RBR witness,

demonstrating that RBR would in fact be able to fulfill the IFT arrival times that Dignity Health apparently desires at all of its facilities.

r. Currently, Dignity is using the AMR CON Holders and Maricopa Ambulance for all of its ambulance transports. *Id*., 309:18-22.

s. Dignity Health owns 50.1% of RBR; its partner AMG in the joint venture is a for-profit entity (*id*., 310:19-311:2); pursuant to the Operating Agreement, the sole purpose of RBR is to develop, own and operate ambulance services in and around Henderson, Nevada / the greater Las Vegas area. The entity's organizational authority includes nothing about developing or providing ambulance transports in Arizona (*id*., 311:21-312:9).

t. Nevada has no CON process and has a completely different regulatory process, using a franchise system. *Id*., 313:7-19.

u. EMS Advisors prepared the initial CON application for Community's input. *Id*., 317:5-12. O'Malley reviewed and approved the application before it was submitted to DHS, but had no suggestions or changes. *Id*., 317:13-318:4.

v. With regard to the "public necessity" requirement for issuance of a CON, and identification of a population's needs, O'Malley defined the population as "Dignity patients" (this was his only articulated concern), but then stated that the Application is primarily intended to serve Dignity Health's needs. *Id*., 319:7-24.

w. With regard to the "public necessity" requirement of consideration of financial impact on existing providers if a requested CON would overlap them, as is the case here, O'Malley was unwilling to agree that existing providers would suffer any adverse financial impact if RBR were to take 11,000+ transfers of Dignity patients; he did concede he simply does not know. *Id*., 321:16-322:21.

x. With regard to the "public necessity" factor of need for more convalescent transports or IFTs, O'Malley acknowledged the Intervenors had expressed the ability to add more ambulances, and

was aware there are other CON holders who are not intervenors (of which he had no information on capacity/ability to increase capacity to serve Maricopa County's population). *Id*., 325:14-326:6.

y. With regard to the "public necessity" factor of "substandard service," O'Malley agreed that RBR's Application is not based upon this contention. *Id*., 326:13-327:2.

z. O'Malley periodically requested "individual leads" within the Dignity organization to track ambulance transports. Everyone agreed to do this, but "[i]t's not part of their job…", so apparently it was not done. *Id*., 327:18-328:12.

aa. Dignity has no uniform system tracking ambulance transports in and out of Dignity facilities and, while denying that Dignity could track this, O'Malley evidenced the fact that he is unaware of what is in patients' electronic records, including his not knowing whether the mode of transport is tracked. *Id*., 328:13-329:18.

bb. O'Malley acknowledged the expense of readiness that an ambulance transport company providing 911 services incurs. That cost underlies the letter RBR submitted to ADHS regarding rates and charges (ADHS-12). *Id*., 334:23-335:2. That letter's referral to "PHI" means "personal health insurance." *Id*., 333:14-15; 335:3-5. This reference means that because the Dignity patient has been admitted, Dignity has a better handle on whether or not it will get paid for IFT work involving the same patient, in contrast to the 911 system, where a provider must take everyone regardless of ability to pay. *Id*., 335:8-16. As such, O'Malley agreed that it makes sense that the collection rate will be higher for people with PHI, as opposed to the 911 population. *Id*., 335:17-21.

cc. Dignity has no evidence indicating the existing CON holders are not meeting their CON required response times. All O'Malley had was hearsay from unidentified users. He did not even ask DHS if anyone was out of compliance, and has not complained to DHS about any CON holder's performance. *Id*., 336:25-337:14.

dd. Dignity does not do anything to track its own numbers for ambulance transports. *Id*., 340:21-24.

ee. Pursuant to Dignity's own policies on ambulance transports, the electronic medical records ("EMR") used by the whole system are supposed to be documenting patient transportation so that it can be reconciled with ambulance invoices, this includes identification of the mode of transport used by the patient. However, O'Malley is unsure whether the personnel at the identified Dignity facilities (in the policy) are in fact keeping such records. *Id*., 413:3-415:23; 440:10-441:6; ABC-30, beginning at p. 11. O'Malley requested this information from his IT systems team and from his clinical teams, but they did not provide it. He cannot say why that is. *Id*., 422:9-13.

ff. Integration of electronic medical records with Community is something Dignity is exploring. However, O'Malley did not testify that he knew this would (or even could) happen. *Id*., 344:8-16. O'Malley could not answer what would happen if Community and Dignity patient care records were integrated, and Community then provided services to a third party (non-Dignity patient). He deferred to Mr. Richardson. *Id*., 345:15-346:6. (Richardson did not address this issue in his testimony.) In fact, this record "integration" is something O'Malley acknowledged "hasn't been done yet." He stated that theoretically it could be done with anyone who was contracting with Dignity to cover ambulance services. *Id*., 346:7-14.

gg. The transport logs Arizona General Hospital (Laveen) was keeping were hard to read, had lots of missing information, were incomplete, and not valuable. *Id*., 347:13-348:11.

hh. Neither Dignity nor RBR made any analysis of the healthcare needs of populations west of the 303 (State Route). *Id*., 349:18-23.

ii. O'Malley is unaware of any Dignity facility not in the service area of any of the intervening parties. *Id*., 350:11-351:1.

jj. O'Malley's focus was solely on Dignity's needs, not on the financial position of any existing provider, total transport numbers, or what other organizations are doing. He did not bother to reach out to BEMSTS for any of their records. *Id*., 352:2-353:10.

kk. O'Malley did state that Dignity was concerned about individuals in rural areas being transported to Dignity facilities, clarifying his concern was the smaller communities outside of Maricopa County. However, he acknowledged that the requested CON would not authorize RBR to do these transports. *Id*., 353:16-354:3. He also acknowledged that were additional emergency responses required, RBR would not be able to respond, even under a backup agreement, as its authority would be limited. *Id*., 354:4-8; 355:5-7.

ll. O'Malley defined "cream skimming" as when someone takes the most attractive component of a larger picture off the table, when someone tries to take a subset that may be more appealing. *Id*., 367:6-14. Referring to RBR's rates and charge analysis letter to the Bureau (ADHS-12), the selection by RBR of Dignity's "vetted population" and RBR having no 911 responsibilities, from a revenue perspective fits the cream skimming definition. But he appears to justify this by stating that RBR's entry would "relieve the burden on 911 units" that are otherwise pulled off 911 to do IFTs. *Id*., 367:19-368:16. No credible and competent evidence was mentioned (or otherwise submitted during the hearing) demonstrating that RBR's requested CON would so impact the 911 system.

mm. O'Malley also characterizes "necessity" in terms of patient experiences with ambulances possibly negatively impacting their use of the Dignity system in the future; however, no evidence was presented that this has ever happened. *Id*., 371:10-17.

nn. If RBR received a CON, Dignity will be both a customer of RBR and also have a controlling interest in RBR. *Id*., 377:3-378:19.

oo. O'Malley expects that if RBR receives a CON, it will put the needs of Dignity first and foremost, over even its own financial needs. *Id*., 383:7-385:15. He acknowledged the example of AMR not wanting to leave an ambulance sitting where Dignity wants it, because it is not economically viable; in contrast, RBR will be able to do that kind of a placement because it will not have to cover obligations to any other users in the system, like AMR has to. *Id*., 383:22-385:13. Further, to the extent an RBR CON provided authority for non-Dignity transports, Dignity's expectation is that those would be secondary to Dignity's satisfaction. *Id*., 436:17-437:3.

pp. O'Malley either could not or did not want to state when Dignity decided to ask RBR to come to Arizona. *Id*., 386:15-387:4.

qq. EMS Advisors received payment of $148,000 from RBR in January 2016. *Id*., 389:17-391:14; ABC-82.

rr. O'Malley is unaware of RBR analyzing any need for ambulance service outside of the Dignity system. *Id*., 387:21-25.

ss. It appears that Dignity's unhappiness with IFT arrival times relates to its misunderstanding of what is required. O'Malley understands "immediate" IFT responses as "an urgent transfer that requires a transfer within 30 minutes, as defined by the clinicians and physicians that say 'this person needs to be transported immediately'." *Id*., 397:10-24. This is not consistent with DHS's definition of an urgent transfer, which depends upon clinical criteria. ADHS-15 at p. 4. He also misunderstands the arrival criteria under the Dignity Health-RBR agreement (modeled on the AMR-Dignity agreement), testifying that a compliant response for an urgent ambulance transport is when, in a clinical provider's opinion, "the patient has an unstable condition and they must have a response time by ambulance within 30 minutes." *Id.*, 425:20-427:11; CA-17, p. 10. He believes the same agreement requires non-urgent pickups within 60 minutes. *Id*., 427:15-20. However, both the AMR – Dignity contract and the RBR – Dignity

contract define urgent response standards in terms of an arrival within 30 minutes (and non-urgent within 60 minutes) of the requested pick up time, at least 90% of the time, on a quarterly basis. *See*, CA-24, p. 9 and CA-17, pp. 10-11. Those arrival criteria are also consistent with AMR Maricopa and PMT's CONs' required arrival times. AMR-4C-002 and 4E-003.

tt. At the time of O'Malley's testimony, RBR had not requested a CON with IFT arrival time commitments that would be subject to ADHS oversight. *Id*., 436:3-7.

uu. The 11,000+ transports projected for year one operations (RBR's ARCR) was based upon the fourth quarter of 2015 report from AMR (October through December) multiplied times 4. *Id*., 442:20-443:15. However, AMR did not have a preferred provider contract with Dignity prior to November 2015 (CA-24, p. 1), and no evidence was submitted during the course of the hearing by Dignity or RBR indicating the accuracy of that approximately 11,000 transport figure; the numbers calculated by the AMR CON Holders was larger (AMR-18A).

13. ***Delores Kells*** is the Director for Dignity Urgent Care Centers in Maricopa County's East Valley (Ahwatukee, Gilbert and Queen Creek). As part of her job, she oversees ambulance transports. RT, V2, 462:9-12; 466:5-7; 503:16-504:5. During her testimony the following exhibits were admitted: CA-136, 224, 230T, 232B, and 232C. Additionally, her testimony included the following:

a. Sometimes it is appropriate for an Urgent Care Center ("UC") to call 911 for a patient transport. *Id*., 469:12-17. This happens approximately once per day in each UC during the busy season; during the slower season it is two to three times per week. *Id*., 470:7-16.

b. Besides the patients they call 911 for, all of the patients coming to the UCs Kells oversees who require an ambulance transport to a different location, in Kells' opinion, are urgent transfers. Otherwise, they would be using their own vehicle. "Zero" of the UC transports are non-urgent. *Id*., 470:23-471:10, 478:13-17, 545:1-15.

c. Kells denied that any Dignity UC in Maricopa had ever requested a non-urgent transport in the last three years. *Id*., 478:13-17. This is based upon the UC physician classification as "urgent/non-urgent" (*id*., 479:2-11) in contrast to the Dignity-AMR contract/AMR CON arrival time compliance parameters put in place by the regulatory agency, where physicians determine clinical conditions which are then defined by the contract/DHS regulation as urgent or non-urgent. CA-17, 24; AMR-4E; and ADHS-15.

d. Kells testified that the process for calling 911 involves UC staff calling the ambulance transport provider (historically this has usually been an AMR entity) and then going through the algorithm with dispatch. Dispatch provides an ETA. Staff speaks to the UC physician who either accepts that time for the transfer, or if the UC "staff" feels the time is inappropriate, they talk to the physician and then call 911 to get an appropriate response. *Id*., 474:5-475:3.

e. Once Dignity UC staff call for a transport (which would be urgent), it irritates Kells if ambulance dispatch continues through the transport algorithm questions. *Id*., 483:8-484:1.

f. With regard to the AMR CON Holders' algorithm for determining urgent versus non-urgent transports, and resource allocation, Kells understands that even after the first three questions under the urgent column, the staff will continue asking questions while dispatch is working to get a unit assigned; she agrees that additional information in the algorithm could be important to determine whether any special equipment is needed. However, all she really wants is an ETA. *Id*., 516:14-519:3.

g. When asked what specific occasions, in the last six months, a Dignity urgent care did not get an ETA after the eight specific algorithm questions, Kells could not respond other than saying "frequent." *Id*., 520:14-520:18.

h. Kells articulated issues Maricopa County Dignity UCs have with arranging and getting "timely" ambulance transports from the AMR CON Holders – she is concerned with the process required when staff calls in to arrange the transport, she is concerned about any ETAs beyond 30 minutes from the time the call was placed, she has sporadic crew issues, and she is concerned about AMR advising the use of 911 when that is not necessary. *Id*., 484:20-486:4.

i. Because of these concerns, Dignity initiated EMS call logs at the Maricopa County UCs (handwritten). CA-232B was offered as the EMS call log from Ahwatukee. Kells did not complete this log and it does not note the patient's condition. Kells denied there was any way to compare the log to patient records, no policy required the completion of it for each transfer, and the number of transports identified (7 in 2017, 2 of which were to 911; 23 for the January to July 2018 time period, including 3 to 911) was incomplete and not accurate. Kells agreed information was missing, including arrival times and the initials of the person completing the form. Some of the entries meet ETAs. Kells did intend this would be completed for all calls for transports to the AMR CON Holders, including the time the call was made, the ETA that was given, and the arrival. But it does not accomplish this. It was also not given to the AMR CON Holders ahead of time to review and/or check for accuracy. *Id*., 492:25-502:8.

j. The UCs Kells oversees are starting to use Maricopa Ambulance in addition to AMR. *Id*., 506:21-507:4.

k. The Queen Creek UC sees approximately 1,400 patients per month. Gilbert and Ahwatukee each see approximately 24 per month. All see approximately two-thirds of that volume in the summer months. *Id*., 508:11-509:8.

l. If 911 is called to these three UCs, AMR is the responding ambulance. *Id*., 512:9-15.

m. If a physician at the UC does not like the ambulance company's ETA, even if the time falls within the Dignity contract required time frame, the UC will call 911, based upon the physician's decision. This possibly could include an ETA of 20 minutes, when the physician wants it quicker. *Id*., 513:20-515:13.

n. Kells was unsure how many times in either 2017 or 2018 an ETA within 30 minutes of the call being placed was offered, and the UC physician declined the transport, choosing to call 911 instead. *Id*., 515:14-516:1.

o. The definition of "urgent" Kells uses is the physician's determination, not that in the AMR-Dignity contract. *Id*., 520:19-24.

p. It is up to Dignity to decide what information is being collected in its Electronic Medical Records; if Dignity decided to collect ambulance transport information, Kells would be able to see it. *Id*., 522:21-523:6.

q. After denying that Dignity had asked its staff to make sure people stay in the Dignity system when being transferred out of an UC (*id*., 525:25-526:6), Kells subsequently acknowledged that as of at least January 2017, this was (and is) indeed Dignity's practice (*id*., 530:19-531:19).

r. Kells did not know the number of incidents, going back to late 2015, where patient morbidity or mortality might have been impacted due to the complaints she voiced during the hearing. When asked whether there were any, she did not know. She could not identify any where patient safety was impacted. She was unable to speak to whether or not the AMR CON Holders were outside of their CON required arrival times when responding. *Id*., 526:23-528:2. Kells agreed she was unaware of any circumstances comparable to Davis's testimony about Las Vegas, where patients went 4 to 12 hours waiting for a transport. *Id*., 528:17-21.

s. Kells agreed her staff makes mistakes, as everyone does, which does not mean they are bad employees; instead, they are human beings. *Id*., 528:25-529:10.

t. Sometimes when a patient walks into the Dignity UCs, they know right away that patient will need an ambulance transport. However, they first have the patient evaluated by a physician, determine what needs to be done, and maybe get an authorization from the Dignity facility the patient will be transferred to, before the ambulance is called. The UC staff **never** call ambulance dispatch to give them a heads-up that there will be a request for an urgent transport in the near future, UC staff goes through its own entire process first. *Id*., 532:20-534:19.

u. Kells believes that whether under the AMR-Dignity contract (CA-24) or the RBR-Dignity contract (CA-17), an ambulance will have to arrive within 30 minutes of the call being placed in order to be a compliant urgent arrival. *Id*., 536:10-538:18; 544:18-25. This is contrary to the contracts noted and to the AMR CON Holders' CON required arrival criteria. AMR-4C and E.

v. Referring to Dignity's contract with RBR in Nevada (ABC-31), which requires an ambulance transport call back within 10 minutes of the UC placing a call, Kells testified this would not meet her needs. *Id*., 540:18-544:6.

14. ***Brandon Hestand*** is the Dignity Paramedic Liaison for Chandler Regional Medical Center and Mercy Gilbert Medical Center, since at least 2016. RT, V2, 548:10-13; 559:1-3. During his testimony, the following exhibits were admitted: CA-128, 214, and 233E, H, J, M and R; AMR-71; and ABC-31. His testimony also included the following:

a. Hestand has access to both Dignity's (patient) Electronic Medical Records ("EMR") and the ePCRs that the ambulance/EMS providers use to document their patient encounters – these are two separate sets of electronic records that can be reviewed and compared. RT, V2, 550:11-17.

b. Of the complaints he receives from Dignity clinicians and staff about ambulance transports, the largest is timeliness of response (showing up after the given ETA). He has received "some concerns" about available equipment (offering the example of a cardiac pump that requires special

training that is used by Mercy Gilbert's Cardiac Cath Lab, where Mercy Gilbert would have to fly the patient to Chandler Regional instead of using a ground transport; and offering "some IV pump issues") which he stated can cause a delay in getting an ambulance with the right equipment. *Id*., 552:1-554:7. However, Hestand was unable to offer any examples of when a transport had been delayed due to an IV pump issue. *Id*., 554:8-554:12.

c. If he receives a timeliness complaint, he calls the provider to address it in real time. *Id*., 555:10-18.

d. Hestand's current contact with the AMR CON Holders is Alex Lopez, who Hestand has no issues with, they have "great communications"; before that it was Allison Skinner. *Id*., 555:20-556:3.

e. In addition to addressing complaints with the providers, he also provides positive feedback. *Id*., 558:12-17.

f. Chandler and Mercy Gilbert have primarily used AMR for IFTs; he characterized the experience as "peaks and valleys." *Id*., 559:4-12.

g. Chandler Regional and Mercy Gilbert do not ever have 911 calls to their facilities. *Id*., 560:6-18. But Hestand referenced an unspecific (no date) time where he contends AMR called 911 when they could not arrive to transport a stroke patient. *Id*., 561:10-562:1.[5]

h. Utilizing email trails/strings, Hestand testified to the following specific events/circumstances:

- CA-233M, which Hestand testified documented 2 delays out of Chandler Regional during the first week of 2016 – one urgent and one non-urgent; the 45 minute ETA for the urgent transport of a 14 year old was too long and the 1 hour 45 minutes ETA for a non-urgent was also too long. RT, V3, 574:15-577:2. In the email, Hestand acknowledged these may have been "growing pains" with

[5] Unspecific references such as this preclude the ambulance transport provider from checking its own records to determine the accuracy/circumstances/possible justifications.

the new service (the AMR-Dignity contract went into effect in November 2015), but was concerned that call center personnel still did not know about the Dignity-AMR contract. *Id*., 577:18-578:7. He said he did not know whether AMR had further meetings, etc. on this issue after the initial exchanges. *Id*., 578:8-18; 582:3-9. He testified that Chandler Regional was able to stabilize the 14 year old until she was transferred, he was unaware of any negative patient outcomes due to the delay he testified to, that when AMR gave an ETA that Chandler Regional did not find acceptable, Chandler Regional called Southwest Ambulance (which at the time was not being managed or controlled by AMR), and he does not know how long it actually took to get the transfer done. *Id*., 600:8-603:3.

- CA-214 involves an August 4, 2017 email from Hestand to other Dignity employees, including his July 31, 2017 email to Allison Skinner (AMR) asking for transport numbers out of Mercy Gilbert and Chandler Regional for 2016/2017. *Id*.,582:10-583:18. He testified he was asking because there had been "quite a few" patients transported by air ambulance that were on a balloon pump and IMPellas when AMR had no staff trained on the equipment. He wanted to know the number of these that were also going by ground ambulance. *Id*., 583:19-584:6. Skinner's August 3, 2017 response, copying Glenn Kasprzyk among others, stated that the request was for data/detail AMR had not historically provided under the AMR-Dignity contract, and the only thing that had changed was Dignity's recent lawsuit against AMR, so Skinner thought it was best for requests like this to go through the attorneys while she and he focused on patient care. He forwarded this to Jeff O'Malley and others. CA-214; *see* also, *id*., 584:18-586:10. Hestand acknowledged the balloon pump is a highly specialized equipment, only used for very sick people, and that sometimes it is best to transport these people by air, which is why there are air ambulances

available. For example, depending upon the time of day, sending the patient into rush hour traffic (where an ambulance cannot go any faster than regular traffic) might be inappropriate. Sometimes air ambulance is the correct resource. *Id*., 603:9-605:11. Notably, Hestand did not testify that the specific incident involved an inappropriate use of an air transport. Hestand is not very familiar with the balloon pump/IMPella, and does not know how many times Dignity facilities see patients requiring this equipment. *Id*., 621:23-622:13.

- CA-233R is an August 5, 2017 email from a charging nurse at Mercy Gilbert involving a patient coming from a rehab center to Mercy. The email states an AMR unit was already at the rehab facility, dropping another patient, and the staff asked if the crew could take the other patient. The crew said "absolutely," but asked staff to process the request through the call center/dispatch. Dispatch said the ambulance could not be used because it was non-urgent. Ultimately, this ended up ok (and no evidence was introduced demonstrating that dispatch's allocation of resources as between urgent/non-urgent was inappropriate, or that an ambulance crew can assign a transport itself). *Id*., 586:11-588:15.
- CA-233J is an August 16, 2017 email from Hestand to AMR employees about a transport from Mercy Gilbert to Chandler Regional where Mercy was given a 40 to 45 minute ETA, and after that time expired, the dispatch called stating the unit had been pulled into the EMS traffic, which added another 45 to 50 minutes to the response. Hestand was primarily concerned because he was unaware this reallocation could happen. He classified the transport as "urgent" in the email, but there was insufficient information provided to confirm this was the case. *Id*., 588:16-589:23. He could not remember what the response from the AMR CON Holders was, and whether it included an explanation for the reallocation of the

resource. *Id*., 589:24-593:5. He clarified he was not saying this was an inappropriate allocation of resources, he simply wanted clarification because he had not seen it before. *Id*., 610:7-611:2. He also was only speculating about how long it actually took to get the non-urgent transport needed. He agrees an ETA is an estimate, that ambulances sometimes show up before, or after that time. Here, he did not know what time the ambulance actually showed up and was unaware of any negative impact to patient care or safety. *Id*., 611:3-612:6.

- CA-233E is an email Hestand sent on November 27, 2017 to AMR employees about a stroke patient going to St. Joseph's. AMR called 911 and Chandler Fire responded. From his perspective, this was an urgent call, where 911 was not needed because hospitals already provide a higher level of care. He cannot recall if he spoke to anyone at AMR about this incident. *Id*., 590:21-592:21. His concern was that AMR made the 911 decision when that is the physician's prerogative. *Id*., 615:4-22. When asked whether there were other documented incidents where AMR inappropriately called 911 for a transport out of a trauma center, he stated he knew one that was not at his facilities, so he preferred to not discuss it. *Id*., 615:24-616:13.
- CA-233H was an email Hestand received March 31, 2018 from Mercy Gilbert's ER Unit secretary/patient care tech regarding an extended ETA, which was reported as being related to AMR having a hard time finding an ambulance with a vent. He believes the pickup was approximately one hour after the original ETA, for an urgent patient. *Id*., 593:14-595:15. Hestand acknowledged that pursuant to the AMR response, its communications and operations employees had been re-educated about establishing more effective communications. *Id*., 616:14-617:8.

i. Chandler and Mercy Gilbert are currently using both AMR and Maricopa Ambulance, with AMR still doing the majority of transports. *Id*., 595:33-596:1.

j. Chandler Regional is a trauma center, having the highest level of acute care in the Phoenix area. It should be able to stabilize most patients, except there are some that simply cannot be stabilized and those will be "lost" (not make it). *Id*., 598:21-600:2.

k. Jeff O'Malley is the person who asked Hestand to bring incidents to his attention; O'Malley did not ask him to look through his email for positive or exceptional encounters. *Id*., 617:9-618:7; 621:2-6.

l. The nature of emergency room business is they are seeing injured, sick, unhappy people. He and Dignity get patient complaints. Staff might be rude, patients complain Dignity is taking too long to process family members (this probably happens every day). This does not mean that Dignity is doing a bad job. *Id*., 622:19-623:13.

m. Hestand testified that for urgent transports, if an ambulance arrived when it is supposed to, he thinks that is acceptable, but he is not sure that the nurses or physicians he works with are ok with that if it takes the ambulance 45 minutes or more to arrive for the transport. *Id*., 627:24-628:8.

15. ***Matt Karger*** is a transfer coordinator for Dignity's Arizona General Hospital (Laveen) and the related freestanding emergency rooms ("ER") (RT, V3, 635:3-638:23). During his testimony the following exhibits were admitted: CA-175, 191, and 192; and MA-39. He also testified as follows:

a. Karger's background does not include any ambulance service experience. He graduated from high school in May 2012 and holds a paramedic degree. He became a transfer/EMS coordinator for Dignity in January 2018, dealing with Dignity's 911 partners. IFTs became part of his job as of May 2018. RT, V3, 635:3-637:14; CA-175.

b. After Dignity acquired Arizona General Hospital (Laveen) in July 2018, he was assigned that hospital and its freestanding ERs. *Id.,* 637:22-638:23.

c. Since starting his current role at Dignity, in May 2018, Karger states he heard five to ten complaints per month about IFTs. The biggest complaint topics were billing or ETAs. He did not attempt to distinguish, proportionately between the two. *Id.,* 640:2-640:12. He referred generally to hearing from others about issues involving ETAs, customer service, crews second guessing doctors and billing. *Id*., 642:9-643:3.

d. He setup a meeting with AMR to address billing and ETA issues for April 24, 2018. From Dignity (among others) Linda Parsons attended. Todd Jaramillo also attended. They discussed problems with urgent versus non-urgent billing and ETAs. *Id*., 643:6-644:5.

e. Karger's specification of the billing issue was AMR coding transports as non-urgent, and then an insurance company denying reimbursement because Laveen Hospital had called it urgent. He contended AMR was unwilling to work with the patients to rectify the situations. *Id*., 644:6-15.

f. Karger has no experience with ambulance service billing, and holds no billing coding credentials. He testified that he does not have anything to do with billing. *Id.*, 679:23-680:8; CA-175.

g. Karger claimed to be unaware of AMR employees actually helping Dignity with billing issues. *Id*., 675:4-676:12.

h. Additionally, later in his testimony he acknowledged that CMS regulations (billing) and coding make a distinction between emergency and non-emergency, as opposed to distinguishing between urgent and non-urgent. He acknowledged his testimony in this regard was inaccurate. *Id*., 676:22-677:4. His switching his testimony to the billing issue being emergent versus non-emergent became incredible/illogical. *Id*., 676:22-678:13.

i. Karger claimed that AMR's response to his stated concern (at a May 24th meeting) about ETAs, was just a "call 911 if you want faster"

response. *Id*., 645:21-646:7. He testified that because of this, he set up a meeting with ADHS's Bureau for the end of May 2018, at the Laveen facility, to discuss billing and use of 911. He deliberately did not include anyone from AMR, stating that he wanted to hear from the State "without any possible influence." *Id*., 646:19-648:11; 679:4-22.

j. At this meeting, ADHS told him that Laveen and its ERs could not use 911, because they were licensed emergency rooms. They told him billing was not in their "wheelhouse," that he should take it up with AMR and possibly the insurance companies. As such, he told his staff that they cannot make 911/emergent calls, educated staff on this policy, and scheduled a meeting with AMR to address his concerns about the Glendale facility. *Id*., 646:19-649:18.

k. He then testified that at the subsequent meeting, held at AMR's Mesa office with Todd Jaramillo and Alex Lopez, he told them he was "expecting faster response times." He characterized Todd Jaramillo as "extremely dismissive" and uncaring/disinterested. *Id*., 649:23-651:19.

l. Referring to a June 20th calendar entry, he related a meeting at Dignity's Glendale facility with Alex Lopez and Todd Jaramillo about customer service and extended ETAs for urgent patients, which lasted 25 to 30 minutes. *Id*., 651:20-652:15. He characterized the AMR representatives as "extremely dismissive", "borderline aggressive", and said not much was accomplished. *Id*., 654:2-22.

m. Karger related particular issues happening after that June 20, 2018 meeting as follows:

- The week of the hearing, the Laveen facility was given an approximate 40 minute ETA (he was not sure) for a non-urgent transport from Laveen to St. Joe's. At the 40 minute mark staff called AMR who related a traffic delay and added 30 minutes. When the crew arrived (he is not sure when that was), they said they could not transport because the patient was obese; however, the weight information would have been given in the initial call. He

emailed Alex Lopez, who called back "almost immediately" and within 10 to 15 minutes the crew had loaded and transported the patient successfully. *Id*., 656:1-658:23.

- In late July 2018, a 30 minute ETA was given for a non-urgent transport, and the crew arrived 35 to 40 minutes later, but then sat in the ambulance bay for 10 minutes, came into the EMS room getting snacks and water, and then went back to their ambulance for 10 to 15 minutes. Patient contact was made approximately 60 minutes after the called was placed, which would be within 30 minutes of the ETA.[6] Karger was present, called Alex Lopez while this was happening, and then spoke to an AMR field supervisor who said he would address the issue immediately with the crew. The field supervisor called back approximately one hour later, said he had talked to the crew, the behavior was not acceptable and would not happen again. *Id*., 655:23-661:23.
- On the night of October 22 (two nights before he testified), a Chandler freestanding ER had what they believed was a non-urgent transport, involving a patient who presented as a potential stroke, but whom Karger testified was stable and was not being transferred as a stroke patient. AMR dispatch activated 911. Karger called Alex Lopez complaining that even though the patient was exhibiting stroke symptoms, use of 911 was not appropriate because they are a licensed emergency room. Lopez called back in approximately 10 minutes, and said that the dispatcher should have asked if the facility wanted 911 activated. Karger opened a formal grievance. *Id*., 661:24-655:25.[7]

---

[6] Note: Under the Dignity-AMR contract and AMR CON, this arrival within 30 minutes of the ETA would be compliant**.** CA-24; AMR-4C and E.

[7] Without patient records/the ability for examination of what information was provided to dispatch, it is impossible to discern whether or not dispatch asking if the calling facility wanted a 911 unit would have been appropriate or not.

n. After the June 20, 2018 meeting with AMR, Karger explored using other providers. They are currently using Maricopa Ambulance for their west side facility (and he says they are great to work with), rarely using AMR there. He claims Maricopa Ambulance stated they have no capacity to do the east side facilities. *Id*., 666:1-668:22.

o. Karger did not know much about ABC's ability to service Dignity facilities. *Id*., 671:19-23.

p. Karger did not know if the San Tan Valley facility he testified about is located in Pinal or Maricopa County. *Id*., 672:9-14.

q. Karger stated that the patient complaints about the billing issues he referred to involved "balance billing": AMR gets paid by a third party insurance company, which does not cover the whole charge, so it bills the patient for the balance. This is an acceptable practice. His issue is that AMR threatened to send patients to collections. However, he agreed ADHS requires CON holders to charge certain rates and charges, and that inherent in this is the understanding that CON holders will try and collect. The "threatening" he referenced involved patients getting final notices in the mail, and phone calls. He agreed it is not inappropriate to send final notices before the charges go to collections, what he characterized as inappropriate is "bullying" patients into paying bills when insurance has already covered the amount it is required to pay. *Id*., 672:21-674:24.

r. Karger considers his role as that of a patient advocate. *Id*., 680:8-9.

s. Karger acknowledged on cross-examination that at the time of his May 24, 2018 meeting with AMR representatives, AMR had been doing a fine job in the east valley with regard to ETAs. *Id*., 681:6-12. At that meeting, Alex Lopez and Todd Jaramillo were also getting resources to Dignity staff in order to educate them and were providing assistance. *Id*., 681:17-682:1. Karger also acknowledged he did not remember a lot of what occurred at that meeting. However, he did recall telling Todd Jaramillo that he would get him the west valley transport numbers if

they could be obtained. *Id*., 682:3-682:24. Karger told Jaramillo about Dignity log books, and said he would share pertinent information. He did end up giving him some numbers about west side transports, but would not give him the logs because Karger thought Jaramillo was just trying to get information to help out during the RBR CON hearing. *Id*., 682:25-683:22. He was the one who decided to not give Jaramillo the EMS logs. *Id*., 687:4-8. He then contended that when he met with Jaramillo in June 2018, he was "completely unaware" of the CON hearing process. *Id*., 683:23-684:7. When confronted with the fact that statement was inconsistent with his reason for not giving Jaramillo the transport logs, he admitted he knew the CON hearing was going on. *Id*., 684:8-18. He likewise articulated suspicion of Maricopa Ambulance's attempts to get transport numbers from Dignity, stating he thought that was for the purposes of the instant hearing. *Id*., 689:25-692:3.

t. When asked whether the "extended" ETAs he testified to were outside of the parameters of the AMR CON Holders' certificated IFT arrival requirements, Karger did not know. When asked how they compared to the AMR-Dignity contract terms, he also did not know and said he was not measuring things that way. *Id*., 684:19-25; 688:221-686:4.

u. When asked how many times there had been incidents where an AMR crew had been rude or inappropriate, Karger responded "lots" (based upon what others had told him) but was unable to relate any additional dates, times or places this might have occurred beyond the above specifics. *Id*., 685:1-16.

v. Karger had no examples of times when "extended" ETAs led to patient care or safety being compromised. *Id*., 685:17-20.

w. Karger admitted he is unaware of any reason that Maricopa Ambulance would be unable to ramp up to meet Dignity's needs in the east valley. *Id*., 693:22-695:9.

x. Bureau employee Aaron Sams was at the two DHS meetings that Karger testified to. *Id*., 696:12-14. His testimony, below, was not entirely consistent with Karger's.

y. No one from Arizona General (Laveen) or its freestanding emergency departments has filed any complaints with DHS about the billing issues, ETA issues, or crew issues that Karger raised during his testimony. *Id*., 696:19-697:16.

16. ***Robb Beery*** was identified as a Geographic Information Systems Specialist. RT, V3, 700:7-10. During his examination, the following exhibits were admitted: CA-124, 127, and 186 through 189. His testimony established the following:

a. Beery is not a system status management expert. RT, V3, 830:23-25. Instead, he does computer-aided dispatch mapping, with an employment history of doing this for public entities. He is essentially (according to his own description) a "map maker." He also does future forecasting, calculating how long it will take to get from point A to point B. *Id*., 701:4-705:8; CA-127.

b. RBR asked him to produce maps with locations in Maricopa County in order to calculating drive time and distance from four sub-operation facilities. He produced two types of maps – he mapped medical facilities in Maricopa County and he did future forecasts for travel time. *Id*., 700:11-12; 705:9-20.

c. His methodology contemplates his forecasting will be somewhat inaccurate due to inevitable variables such as road conditions, weather, sporting events, winter visitors, etc. He uses Google Maps and WAZE to help him with rush hour calculations. *Id*., 706:12-22.

d. CA-184 was described as including all accredited Maricopa County hospitals (obtained from DHS records) including Dignity facilities, which information he received from EMS Advisors. *Id*., 710:9-19.

e. CA-185 is similar except it includes skilled nursing facilities, which information he received from EMS Advisors. *Id*., 710:20-711:9.

f. CA-186 through CA-189 map projected 30 minute drive time "zones" based upon Community Ambulances' four proposed sub-operation stations, located at four different hospitals – Chandler Regional, Mercy Gilbert, St. Joe's, and St. Joe's Westgate. CA-186 incorporates all four, with overlaps; CA-187 is the east zone, containing two sub-operation stations including overlaps; CA-188 is the central zone; and CA-189 is the west zone. The drive time ends at the edges of the green areas. *Id*., 711:23-714:4. From each of the four hospitals he plotted how far a vehicle would be able to get in 30 minutes. *Id*., 720:22-721:1.

g. The green areas representing that 30 minute travel time will change if there is no vehicle at a particular sub-operations station. If there is not a vehicle at all four, there would be no green areas. *Id*., 721:9-722:17.

h. He did not include any information about the number of transports that might be run simultaneously; that is a fact that would impact his calculations. *Id*.,722:18-723:17.

i. Beery also did not know the number of available vehicles that will be kept at any of the sub-operations stations. *Id*., 725:1-4.

j. No consideration was given to variations in ambulance transportation call loads at different times of day, such as what times of day more calls for transports might occur. *Id*., 725:5-9.

k. Each of his maps assumes a vehicle will be present **and ready to move** at each of the sub-operations stations plotted. *Id*., 725:10-14.

l. In order to meet the drive times his mapping shows, there would need to be a depth of available ambulances sufficient to always have one ambulance **ready to go** at each of the four points. *Id*., 725:15-726:4.

m. If RBR receives a CON, it will only be able to cover all calls for transports in the green areas within 30 minutes if there is an immediately available ambulance present at each of the four sub-operations stations. *Id*., 726:13-21.

n. The mapping does not take into consideration how long an ambulance is "out of commission" when responding to a call. No averages for this were built in or considered. *Id*., 727:5-10.

o. Beery also did not drive any of the distances he plotted. *Id*., 727:11-17.

p. Beery did not consider what percentage of time the closest ambulance to a call might not be available. *Id*., 727:21-728:18.

q. Beery has no idea how dispatch will work for RBR, or what ambulances will be moved to cover if others go out on calls. *Id*., 729:22-25.

17. ***Robert Richardson*** is the CEO and part owner of Community Ambulance. RT, V3, 732:15-17; during his testimony the following exhibits were admitted: CA-43, 125, 154, 156 through 169, 176 and 223; ABC-32; and AMR-2. Additionally:

a. Richardson was offered to establish the "fit and proper" element of the proceeding; he was not offered to establish the "public necessity" aspect. RT, V5, 1167:1-4, 20-22.

b. Richardson testified to his work history and background. RT, V3, beginning at 732.

c. RBR was started in approximately 2010, with the initial intent that it would be a "small, little company," but then it grew bigger and bigger. *Id*., 743:20-24. The company started with 3 ambulances and 18 – 19 employees to do "convenience transfers" for Dignity. As of the time of the hearing, the company was doing both 911 and non-911 (all types of service). *Id*., 758:16-759:13; 763:5-764:1. They currently have 33 ambulances, holding approximately 20% in reserve, and they run 95 to 100 transports a day. RT, V4, 934:8-14.

d. RBR has no operations other than those in Clark County, Nevada. *Id*., 934:15-25.

e. There is no CON process in Nevada that would be comparable to Arizona's. RT, V3, 758:9-12.

f. Richardson and Brian Rogers own AMG, a Nevada LLC, that has a managerial agreement to run RBR in exchange for 3.5% of the gross sales. *Id*., 774:24-775:19.

g. Richardson recalls that after speaking with Jeff O'Malley in May 2015, in December 2015 O'Malley asked him to look at RBR coming to Arizona. In January 2016, RBR cut a deal with EMS Advisors for assistance/feasibility. They then applied for a CON in June 2016. *Id*., 799:8-800:19.

h. Richardson spoke about RBR's Application with "different hospital folks," the CON holder known as "North County," and Chief Duran from Buckeye Valley (who wanted RBR to carve the Buckeye area out of RBR's proposed service area). He did not meet with any other fire chiefs. The letters of support filed with DHS were obtained by Mark Burdick of EMS Advisors. *Id*., 801:9-807:16.

i. Richardson discussed RBR's intended Medical Director, but neither this person nor anyone else with clinical expertise was called as a witness. *Id*., 810:17-812:7.

j. RBR is "looking at doing" an automated integration of ambulance ePCR records with Dignity Health system records, working with Dignity's IT people; he called this a "concept." *Id*., 815:11-820:8. However, RBR is not doing that type of integration in Nevada. They are not even working on the concept there. RT, V4, 954:17-955:18. He acknowledged that this kind of integration with a hospital is a "developing concept." He is unaware of anyone else doing this, because it is hard to do; he is unaware of what hurdles are involved in being able to do it, and cannot say he knows it will be able to be accomplished. He agrees one hurdle is uncertainty about the interconnectivity of ePCR records. *Id*., 956:3-958:10. He also acknowledges that if it were not a big problem to do this, everyone would be able to do it, including Intervenors. *Id*., 958:11-21.

k. This ambulance record integration project is not something RBR included any line item for in its ARCR or otherwise budgeted for. RBR's proposed Arizona operation includes no IT position. RT, V5, 1144:2-1145:14.

l. Richardson testified regarding intended ambulance equipment and employees. RT, V3, beginning at 820:22.

m. RBR wants to charge Phoenix uniform rates, but to not charge for supplies. *Id*., beginning at 826:5.

n. After RBR submitted its revised ARCR (because it did not like the Bureau's findings letter associated with the initial ARCR), the Bureau's second evaluation and proposed rates "went in the wrong direction," and are not what RBR wants. *Id*., 828:4-831:19. Rather than addressing that second findings with the Bureau, RBR simply told the Bureau it would address it at the hearing. *Id*., 831:22-832:10.

o. Richardson stated a willingness to amend RBR's Application to include arrival times (*id*., 833:16-22), but neither he nor any other RBR witness formally stated what CON required arrival time parameters RBR would be able to be compliant with or would be willing to accept.

p. RBR's plan for temporary services during times it would not be able to provide the services the CON it requests would require is to look to the current CON holders. *Id*., 834:8-16.

q. Richardson has no experience with the Arizona CON regulations. *Id*., 835:3-5. For example, Richardson believes that some of the 11,315 transports listed on RBR's ARCR are going to be non-ambulance transports. *Id*., 853:16-19. Richardson is also unclear on how the Bureau evaluates CON arrival times (*id*., 890:2-13) and does not know how the Bureau interprets an urgent arrival. *Id*., 891:8-23.

r. Richardson also has no experience overseeing ambulance operations other than those in Nevada. RT, V5, 1168:19-22. While that experience establishes ability to operate in Nevada, the Bureau's position in the current proceeding is that the question is whether RBR is fit and proper to operate in Maricopa County, Arizona. *Id*., 1169:10-15.

s. Richardson's testimony established a lack of familiarity with Arizona statutes and regulations governing ambulance transports. For example, *id*., beginning at 1169:16. See also, subparagraph q, above. He

testified that in addition to RBR's attorneys, EMS Advisors is helping with this. *Id*., 1188:17-189:1.

t. Richardson did not know the number or identification of CON holders currently existing in Maricopa County that can provide the same services that RBR proposes to provide. RT, V4, 885:7-21; 981:3-15.

u. RBR Management, LLC's address is 30 N. Central Ave., Phoenix, AZ (the Application address and what it is still using). RT, V5, 1163:16-1164:4. That address is a Dignity Health office space. *Id*., 1188:3-15.

v. Richardson was unclear on who the applicant in this proceeding is, Community Ambulance, LLC or RBR, LLC. He deferred to the attorneys. *Id*., 1166:12-16.

w. The year one transports RBR projects (11,315) are all for Dignity Health patients. RT, V3, 836:14-19. However, the Application is not just to serve Dignity Health, but for authority to serve the "whole system" in Maricopa County. RT, V5, 1174:4-18. While Richardson understands this would involve duties and responsibilities to the whole system, when asked what the plan is to serve the Maricopa population, he stated that RBR will "put the emphasis and everything to take care of [Dignity]," it will serve as a "backup" or "option" for others if it is asked and if it can be available ("able"). *Id*., 1174:20-1175:13. Because DHS will expect RBR to be able to serve the entire population covered by the CON it has requested if its application is granted (*id*., 1175:18-22), counsel for the Bureau asked what resources it might have to serve others. *Id*., 1175:18-1176:16. Richardson again stated that RBR will first take care of the projected Dignity transports, but would also help the community with the resources it has, possibly expanding, but its emphasis and focus will be on the Dignity system. *Id*., 1176:17-1177:2.

x. Richardson also testified that the requested CON was not limited to authorization to serve Dignity facilities and Dignity patients, because it wants to be able to back-up the system, help overall Maricopa County, and in particular help "underserved areas." *Id*., 1177:19-1178:19.

However, no competent evidence was elicited regarding how it is RBR would have the ability to back-up the non-Dignity system, help overall Maricopa County, or help underserved areas. No description of what those "underserved areas" might be or of any need for additional resources in any such area was provided by Richardson.

y. Richardson would be able to craft a definition of a Dignity Health patient that might have been included in RBR's requested CON's description of transport authority. RT, V3, 843:13-844:12.

z. The Bureau asked Richardson about items outlined in the Guidance Document, ADHS-15, including (1) RBR's plan to ensure that ambulance services are maintained and improved for rural communities and county islands (within the requested service area), to which Richardson stated that if an area is defined as rural and a provider is already there, RBR would expect that provider to continue serving the area, he believes this would be accomplished through dispatch identifying calls for rural areas, but has no idea what definition of "rural" dispatch would use; (2) RBR's assessment of the impact of a successful application on individuals living within and in rural and wilderness areas adjacent to its proposed service area and RBR's plan to address that impact, to which Richardson stated that RBR is "sensitive" to rural areas' concerns and needs, and its plan is basically the same as item No. 1, RBR will let the companies already providing services continue to do what they are doing; (3) with regard to the fourth and fifth bullet points at the top of ADHS-15, p. 3 (assessment of financial and operational impact of a successful application on the ability of existing CON holders to service residents within and living in rural and wilderness areas adjacent to the CON service area requested/plan to ensure continued ambulance service in rural and wilderness areas if the current CON holders are unable to continue serving those areas), Richardson said he would have the same answer

(let the existing providers continue to do what they are doing in those rural areas). RT, V5, 1178:22-23; 1179:14-1184:2; ADHS-15 at p. 3.

aa. This is consistent with Richardson's testimony that RBR "would let" AMR continue to do patient transports out of Wickenburg. RT, V3, 838:6-11; 844:14-15.

bb. Richardson agrees that the town of Wickenburg cannot be reached from RBR's westernmost substation (St. Joe's West Gate) in 30 minutes or under. RT, V4, 865:10-866:25.

cc. Richardson does not know what parts of Maricopa County are considered rural. RT, V4, 981:20-911:4; 946:6-16.

dd. Richardson believes there are no Dignity facilities east of the 101. *Id*., 869:8-870:7. Richardson has no idea the number of IFTs that might be generated east of the 101. *Id*., 871:7-13.

ee. With regard to the proposal that RBR might backup the Buckeye area, Richardson is aware that AMR Maricopa (CON 136) already backs up that area, and was unaware whether PMT would also be able to do IFTs there. *Id*., 941:10-942:17. He was unaware of how long it might take for RBR to get to Buckeye from the edges of the green areas Mr. Beery plotted. *Id*., 943:5-9.

ff. When it comes to backing up providers in rural areas, like Wickenburg, RBR is apparently only concerned with doing that if there is a Dignity patient involved. *Id*., 900:21-901:16.

gg. Richardson agrees it is harder to do ambulance transports in rural areas, as compared to urban. *Id*., 946:21-24.

hh. Also with regard to the Guidance Document (ADHS-15, p. 3), when asked how RBR would assure that its service model will be cost effective and not result in higher ambulance rates, Richardson testified that this is why they want to be part of the Phoenix uniform rate group. RT, V3, 845:21-25. His testimony did not address the question of how duplicative infrastructure or RBR's focusing on the non-911/known private health information patients that its letter to ADHS identified as its

focus (ADHS-12) would impact overall system costs, and possibly result in an overall (Maricopa County system) request for a rate increase. He did acknowledge the potential of the negative impact of duplicative infrastructure on rates and changes. RT, V4, 969:22-974:6.

ii. Richardson confirmed that Jeff O'Malley (Dignity) "is the need" behind the RBR application. RT, V3, 847:18-848:11.

jj. Richardson expects Community Ambulance will capture close to 100% of transports involving any Dignity patients and Dignity affiliated facilities in Maricopa County during year one of operations. *Id*., 876:21-878:5. He understands this would be between 11,300 and 18,500 transports. *Id*., 878:12-16. However, no competent evidence demonstrated that with the resources outlined in its year one ARCR projections, RBR would in fact be able to do up to 18,500 transports for Dignity facilities/patients.

kk. Richardson was unwilling to commit, during his testimony, to whether RBR would put IFT arrival times on the CON it has requested. *Id*., 896:8-15.

ll. Richardson frequently deferred to EMS Advisors, for example, stating that they would be the ones to check with the Bureau about any substandard service, and testifying they know how the 11,315 transports contained in their ARCR relate to the whole body of transports in Maricopa County. *Id*., 910:2-912:25. EMS Advisors was the one to look at ambulance transports over time, to see if they were growing to track population growth. *Id*., 974:14-976:17. EMS Advisors also had the information about the loaded billable mile estimate in RBR's ARCR. RT, V5, 1138:4-1139:22.

mm. Richardson agreed that one solution to the Henderson Fire Department issues that Rod Davis testified about, occurring before 2013, was the Nevada legislature – in 2013 – enacting legislation requiring hospitals to accept patients within 30 minutes. RT, V4, 935:16-25.

nn. Richardson agrees there is nothing unique about the RBR Management Agreement (for operating a CON) that would preclude other ambulance providers from agreeing to the same covenants. *Id*., 938:9-940:7.

oo. There is a national discussion about services like Uber and Lyft impacting ambulance transport numbers. *Id*., 976:20-978:6. However, RBR did no analysis of how Uber and Lyft type services might impact the population growth they say is expected. *Id*., 979:4-9.

pp. The paramedics and EMTs that will work for RBR in Arizona will have the same scope of practice as what is in Arizona's regulation (AMR-2), RBR will not require its EMTs/paramedics to be able to do anything more than that scope of practice. *Id*., 984:18-985:4.

qq. While the Richardson/Roberts entity AMG performs the day-to-day operations for RBR in Nevada, the management of the Arizona operations is still under negotiation. *Id*., 996:7-997:25. Responsibility for day-to-day operations in Arizona, if RBR gets a CON, is still an unknown.

rr. In 2015, RBR did approximately 8,000 transports in Nevada with 14 to 15 ambulances; for its Maricopa County operation, it proposes to do approximately 11,000 with 5 ambulances. *Id*., 1122:14-20.

18. ***Aaron Sams*** (AS CALLED DURING RBR'S CASE-IN-CHIEF; testimony for Bureau's presentation is below) is the CON and Ambulance Rates Manager for DHS/BEMSTS, where he oversees licensing and contract approvals. RT, V4, 1004:12-19. During his testimony an exhibit from Richardson's testimony was admitted (CA-176) additional exhibits admitted were ADHS-17 through 24. Sams' testified as follows:

a. Previous to his current position, he did financial analysis for ambulance transport rates, including the analysis of RBR's Application (pro forma ARCR). *Id*., 1004:20-1005:3.

b. His first findings letter, ADHS-8, p. 11, contains two columns, comparing RBR's ARCR information to the Bureau's analysis. The Bureau used actual data from two existing IFT providers and concluded

RBR would collect less than 2% more than it originally calculated. *Id*., 1005:9-1007:2.

c. RBR submitted a revised ARCR, and Sams did the second financial analysis. His findings letter is ADHS-13. At p. 11, there are the same two columns comparing the revised ARCR to the Bureau's analysis. *Id*., 1007:4-20.

d. Sams explained how he calculated mileage reimbursement, including his use of structures dictated by Arizona statutes and rules. His calculations ended up differently than RBR's desired Phoenix uniform rate. *Id*., 1009:4-1010:14.

e. No questions were asked of Sams that called his/the Bureau's calculations into question.

f. RBR's financial projections (ARCR) did not include any contract discounts. An ambulance transport provider entering into contracts for discounts with third party payors (such as Blue Cross Blue Shield) is "routine," but RBR did not propose any. *Id*., 1017:13-1020:2.

g. If RBR did have contractual discounts that would impact the Bureau's financial analysis, the numbers would change. *Id*., 1020:7-1021:1.

h. ADHS-17 through 24 are letters of support for RBR's Application that DHS received. *Id*., 1011:2-4.

19. ***Mike Evans*** is an accountant (CPA) with ambulance industry work history, who was hired to analyze RBR's ARCR reporting for testimony during the hearing, and to offer financial impact opinions. RT, V4, beginning at 1023:25; CA-132. During his testimony the following exhibits were admitted: CA-132 and 235; AMR-54 and 56C; ABC-63 and 74. Additional matters from his testimony are as follows:

a. While Evans analyzed RBR's ARCR reporting for purposes of his testimony, he did not prepare the ARCRs, a person named Dean Taylor did. *Id*., 1029:8-1030:18; 1032:5-14.

b. Robert Richardson told Evans that RBR would be using 5 ambulances, 24 hours per day, 7 days a week, 52 weeks a year for operations. *Id*., 1033:15-24.

c. Certain operating expenses were calculated at 140% of Community Ambulance's Nevada operations (in 2015) as compared to the 11,000+ RBR's ARCR projects for year one in Arizona. *Id*., 1042:10-1043:16.

d. Evans offered his opinion that the RBR pro forma ARCR is reasonable and achievable. *Id*., 1045:23-1046:3.

e. Evans also offered his opinions regarding the Phoenix unified rate group, how it was established and what the intention for it was. *Id*., beginning at 1046:9.

f. He found BEMSTS's second findings letter (on rates and charges – ADHS-13) "puzzling." *Id*., 1048:10-21. He questioned the Bureau's decision to not recommend RBR's requested rates (to be part of the Phoenix unified group), not based upon any math errors or other Bureau errors, but on a discussion of history/rationale/reasoning for the unified rate group. *Id*., 1049:12-1051:1.

g. However, on cross-examination he acknowledged not knowing whether the Bureau considered the history behind the Phoenix uniform rate group when doing its findings. *Id*., 1105:7-17. Rather, his testimony was that in his opinion "absent extraordinary circumstances" if an applicant requests the uniform rates, the Bureau should recommend those because it is "good public policy." *Id*., 1105:19-1109:7.

h. Evans does not disagree with the financial analysis the Bureau did. *Id*.,1110:9-13.

i. Evans performed a financial impact analysis for the AMR CON Holders, including all nine of the AMR affiliated CON holders that originally intervened, calling them the nine "Maricopa AMR CONs," even though two of those entities' service areas only overlap Maricopa County in very small part. *Id*., 1053:9-14; *see* also, AMR-5A and 5B.

j. After doing his financial impact analysis, starting on the third page of his exhibit (CA-235), he made the adjustments that he believes the AMR CON Holders "should" make if Community Ambulance receives a CON. *Id*., 1053:15-1054:9. In his opinion, there would ultimately be a

$660,000 impact. *Id*., 1054:11-1056:2. However, he proposes the loss would not be as great if the AMR CON Holders had already lost the transports, or some of them, to another provider. *Id*., 1056:8-18.

k. The financial impact Evans calculated is not the "less than 10%" that RBR proposed, but a loss of net income as a percentage of existing net income of 13.95%. *Id*., 1090:2-1091:5.

l. Evans agrees that ambulance transport expenses can be variable or fixed. Some fixed cannot be reduced when transports are lost. However, his year one financial impact analysis reduced all AMR CON Holder expenses proportionately, he gave no consideration to fixed expenses that would not be able to be adjusted in year one. *Id*., 1091:7-1093:2. In fact, Evans calculated that certain fixed costs could be reduced by 60%. *Id*., 1093:3-22.

m. Evans also reviewed and commented on/criticized the financial impact analysis done by the AMR CON Holders (AMR-54). He had no criticism of the first four pages of that document, but said he was "surprised" by pages 5 – 8, as not all nine of the AMR CON Holders originally intervening[8] were included. *Id*., 1056:21-1059:20.

n. His second criticism was that the lost transports calculated (13,023) was not the 11,315 listed in RBR's ARCR, apparently both because the numbers differed and because "there are going to be instances where Community Ambulance is not available to provide the service when a facility wants that service provided." *Id*., 1059:22-1060:21. Notably, this testimony is inconsistent with that provided by Dignity and RBR witnesses regarding the intentions for RBR.

o. Evans's third criticism was that depreciation expenses were not included in the adjustments due to loss of business. *Id*., 1060:22-24.[9]

---

[8] That number was reduced due to the consolidations mentioned above at ¶6.

[9] This was later explained by Rich Bartus as related to fully depreciated ambulances being taken out of service. RT, V8, 2136:24-2137:20.

p. The fourth and final criticism was that in adjusting the bad debt, a percentage (which he computed) of 25.6 was used as opposed to the percentage from the overall 2017 rollup (including CONs 58 and 62) of 29.5%. *Id*., 1060:24-1061:8.

q. In considering the financial impact on the overall AMR presence in Maricopa County, Evans did not give any thought to why CONs 62 and 58 might have been omitted from the AMR CON Holders' analysis; he did not request any data regarding the number of Dignity IFTs done by the holders of CONs 58 or 62. *Id*., 1063:10-22. He agreed there would be no financial impact to CON 58 (or 62) if there were no Dignity transports that were going to be lost; he simply included each because they were Intervenors. *Id*., 1064:5-22.

r. Ultimately, Evans does agree that the AMR CON Holders will suffer an adverse financial impact if RBR receives a CON. *Id*., 1065:19-24.

s. Evans did not try to estimate the financial impact upon any entity that was not a party to the proceedings. *Id*., 1103:7-16.

t. Evans did not do any financial impact analysis for either ABC or Maricopa Ambulance. *Id*., 1061:21-1062:19.

u. If RBR's Application is approved, that additional CON would then inject more expense into the overall system, through the overlap of support and management types of functions, there would be redundancy, and when expenses are added, the system becomes less efficient, which can increase the cost per transport. *Id*., 1070:3-23. While he was unwilling to testify that the increased cost per transport is what "generally" happens, his testimony in the Timber Mesa hearing (during the last 12 months) indicates that was his opinion then. AMR-56C, pp. 126 – 127 (pp. 1839 through 1840 of the transcript); *see* also, *id*., 1070:24-25.

v. While Evans did not calculate any financial impact in the instant matter beyond the first twelve months, he agrees that unless the number of ambulance transports in the system grows by the same number of

transports that RBR ultimately provides, there will be ongoing financial impact in years two and three. *Id*., 1071:2-1072:9.

w. Evans did testify to a number of questions and problems he had with Dean Taylor's ARCR calculations. *Id*., beginning at 1073:19; see also, ABC-74.

x. Generally speaking, an ambulance transport provider is more likely to get paid for an IFT than for a 911 generated transport because the payor (on the IFT) is known from the originating facility's records. *Id*., 1077:14-1078:5; 1078:13-17.

y. From RBR's Application, he understands 100% of the transports it will do will originate at Dignity facilities. *Id*., 1079:15-20.

z. According to its pro forma ARCR, during its first year of operations, RBR will not offer any contractual discounts to its customers. *Id*., 1083:16-20.

aa. Evans did find some of the expenses listed on RBR's ARCR to be too high. *Id*., 1085:24-1086:1.

bb. Evans did no operational impact analysis (for the AMR CON Holders' operations). *Id*., 1087:10-12.

cc. Evans has done more than 200 ARCR filings, but none ever involved a provider that intended to rely solely on part-time employees, as RBR proposes it will do. *Id*., 1098:12-22.

dd. While contending that "today's environment" means that IFTs might not be reimbursed better than 911 transports (due to Medicare constraints), Evans agrees that a provider has a better chance of collecting anything based upon an IFT transport as opposed to a 911 transport, and that half a loaf is better than none. *Id*., 1110:20-1111:18; 1112:25-1113:11; *see* also, ADHS-12.

20. ***David Argue, PhD.*** is an economic consultant and professional witness retained by Community Ambulance to consider the local IFT market and opine on how granting RBR / Community Ambulance a CON would affect transport services, hospital facilities, and their patients. RT, V5, 1201:8-1207:25; CA-129. During his testimony, exhibit CA-129 was admitted. Additional matters discussed were as follows:

a. Dr. Argue was paid $725 per hour for his services. *Id*., 1239:6-7.

b. Dr. Argue opined that even in the healthcare market competition is generally helpful, it can result in better quality and lower priced services. *Id*., 1208:1-16.

c. He proposes having ambulance service competition is good for the healthcare system and its patients because hospitals have alternative ambulance providers to turn to for services. If one is not doing a good job, it can turn to another. *Id*., 1208:23-1209:18.

d. He understands RBR's Application is just for IFTs, as opposed to a combined IFT/911 transport. He suggested that the hospital involved in an IFT would have responsibility for the quality of care provider by an ambulance company (notably, no testimony established that is the case in Maricopa County). *Id*., 1211:4-1212:11.

e. He opined that ambulance transport services affect a patient's perception of hospitals (while citing no research, studies, treatises, etc. establishing the same). *Id*., 1212:12-1213:11.

f. Similarly, without referencing any treatise, general studies or studies unique to this matter, or other authority, he offered descriptions/opinions regarding the importance of preferred provider contracts, and what having a hospital be an ambulance service joint venture partner might mean to that process. *Id*., 1231:12-1216:8.

g. When asked to speculate about what would happen if a joint venture failed to improve services, he acknowledged it depends upon the particular parties involved, demonstrating no knowledge about what might happen in the instant situation. *Id*., 1216:9-1217:2.

h. Argue opined on Arizona's CON regulations and intentions (rather than deferring to ADHS and BEMSTS). For example, *see id*., 1217:3-1221:7. His focus was on what the hospitals are demanding insofar as services go, as opposed to any ADHS or Bureau regulatory considerations. *Id*., 1221:8-20.

i. Without providing any background of knowledge regarding the same, he opined that the overall Maricopa County patient population would not be worse off, and could be better off, if RBR's Application was granted. In making this conclusion, he did not address any economic factors/possible implications to rates and charges. *Id*., 1222:7-1223:4.

j. In part, his opinions are based upon the fact that Dignity can terminate or not renew the ambulance services agreement it struck with RBR if it is not happy. *Id*., 1224:11-1225:14; CA-17.

k. Upon cross-examination, the following were established: (1) Dr. Argue acknowledged he does not know how many CON holders provide the exact same services that RBR proposes to provide in Maricopa County (*id*., 1230:5-12); (2) he agrees the instant application is quite different from the hearing on Maricopa Ambulance's CON application, where he testified, in that AMR had acquired Rural/Metro and there was basically only one provider present then (*id*., 1230:20-1232:1); (3) Argue was unaware of Jeff O'Malley's testimony, and did not understand that Dignity does **not** intend there will be a competitive bidding process that will involve RBR (*id*., 1232:8-1233:10); (4) Argue does understand RBR has a contract waiting for it to do the Dignity transports, and will not be competing to get that contract (*id*., 1233:21-25); (5) if a company is a majority interest holder in a joint venture and obtaining profits from each transport, that company will be financially incentivized to use that joint venture's transports (*id*., 1234:1-21); (6) because the AMR organization and Maricopa Ambulance both provide services to Dignity today, if it is not satisfied with one, it can turn to the other, which is the definition of a competitive market (*id*., 1236:17-1237:5); (7) if RBR does not get a

CON, there will still be competition in the market between existing CON holders (*id*., 1239:8-14); (8) Argue has no information about Dignity's purported "needs" (*id*., 1240:5-7); (9) he also has no information demonstrating Maricopa Ambulance could not ramp up and meet Dignity's contract requirements (*id*., 1240:22-1241:3); and (10) he has no empirical knowledge that Community Ambulance has a greater quality of care than existing CON holders can provide (*id*., 1249:19-22).

l. Further, Argue demonstrated the fact that he was not entirely familiar with ADHS's regulatory requirements and philosophies. For example, *see id*., 1241:4-1242:11.

m. Argue agrees that if a provider does 911, IFT and convalescent transports, there will be an infrastructure cost associated with providing 911 services. *Id*., 1243:14-20.

n. Argue has no reason to disagree with Rob Richardson's statement, in ADHS-12, that by not having to provide 911 services, and having a population of patients where Dignity already has health information, RBR will be able to have lower bad debt ratios that other providers in Maricopa County. *Id*., 1244:6-18; ADHS-12.

21. ***Brian Rogers*** is RBR/Community Ambulance's Chief Operating Officer and owner through his 50% interest in AMG. RT, V5, 1254:20-1255:4. During his testimony, the following exhibits were admitted: CA-149, 152, 155, 173, 225 (p. 5 only), 236, and 237; and ABC-47. Additionally, his testimony included the following:

a. Rogers testified regarding Community Ambulance's services in Clark County, Nevada, both 911 and non-911. *Id*., beginning at 1277:19.

b. In 2015, RBR / Community Ambulance did 21 to 22 transports per day and between 7,000 and 7,200 transports that year. *Id*., 1280:15-23.[10]

[10] Applying Mike Evans's testimony that 140% of Community Ambulance's 2015 operation expenses were used on RBR's ARCR because the 11,315 transports was equal to 140% of Community Ambulance's 2015 transports does not follow this math. 140% of 7,000 is 9,800; 140% of 7,200 is 10,080.

c. When Community Ambulance entered the Clark County 911 transport market in 2016, it had a "huge spike" in its transports, increasing its volume by about 400 times. *Id*., 1279:22-1281:4.

d. Rogers testified to RBR's Nevada 911 response time compliance. *Id*., beginning at 1281:23. He also testified to its IFT response requirements. *Id*., beginning at 1282:21.

e. Rogers stated he would agree to have arrival time compliance on RBR's CON, if granted, in Maricopa County. However, at no point during his testimony did he state what arrival time compliance RBR would be able to meet or was willing to agree to. *Id*., 1285:23-1286:4.

f. Rogers initially denied that Uber/Lyft type services do any transports that might otherwise be done by ambulances in Las Vegas. *Id*., beginning at 1295:23. However, when discussing the October 1 Harvest Festival event, he agreed that injured people "absolutely" were taking Lyft, Uber and taxis to get to the emergency room. *Id*., 1320:1-4.

g. The system status management planning Rogers does for RBR's Nevada operations, to coordinate supply with demand, involves his use of Excel spreadsheets and manual calculations, which is what he will do in Arizona. He is aware of certain automated options, which might be used. *Id*., 1296:20-1299:11.

h. RBR's operational plan for year one Maricopa County (11,315 transports) include one of the six ambulances being held in reserve for maintenance, it will not be used if all of the other five are busy. *Id*., 1305:9-1306:21. Four of the ambulances will be staffed 24/7, with the fifth being used as a "peak schedule" 12 hour vehicle, running approximately from noon to midnight. *Id*., 1326:19-1329:8; 1332:10-12.

i. Maricopa operations will be dispatched out of a "transfer center," that RBR will be involved in. *Id*., 1307:5-9.

j. He is aware that Jeff O'Malley started looking into the ambulance transport issue in 2015. Yet, Dignity Health gave RBR no information about the number of transports out of its hospitals, heavy transport days

of the week, what times of day transports were most heavily used, Urgent Care use of transports . . . nothing like that. *Id*., 1323:3-1325:17.

k. Dignity's desire for RBR to service all Dignity facilities and all Dignity patients is a transport body exceeding what is in RBR's pro forma year one ARCR. *Id*., 1343:13-1344:4.

l. Year one RBR will "laser focus" on just Dignity. *Id*., 1344:24-1345:4.

m. Despite the Dignity position that it has patients in all zip codes, so an RBR CON must cover all zip codes, Rogers was unaware of whether there are any Dignity patient IFTs coming out of Gila Bend, the far west of Buckeye, the Point of Rocks zip code area, the Black Canyon zip code area, Tonopah, or the super rural areas of Ft. McDowell and Aguila. He also does not know if there are any Dignity facilities in any of these zip codes areas, but he thinks not. *Id*., 1345:12-1347:15.

n. It will be physically impossible for RBR to do all Dignity transports 100% of the time within 30 minutes. It is also impossible that any Urgent Care in Maricopa County only has "urgent" transports. *Id*., 1348:1-9.

o. Rogers is aware that the intervening parties have IFT authority in Maricopa County, but initially stated he was unaware of any other such authorized providers. When prompted, he stated that Buckeye and North County have this authority. He was unaware of who else might. He did not know whether Daisy Mountain, Sun Lakes or the City of Mesa (for example) have this authority. *Id*., 1350:9-1351:6. He was also unaware of the IFT volume these other entities might do. *Id*., 1351:7-9.

p. Rogers sat in the hearing room, during the hearing, and heard other witnesses testify. He agrees that the staff at the Dignity Laveen Hospital, Urgent Cares, freestanding ERs, and other facilities that are not level one trauma centers are "going to need to be educated" that what they desire for IFT arrival times is not necessarily in line with what Dignity contracts for . *Id*., 1351:13-25.

q. Rogers also agreed that based upon his experience when an Urgent Care center is maybe a bit understaffed, and really busy, they tend to have the "I want it now" philosophy. *Id*., 1352:1-6.

r. There is a benefit to an ambulance transport company receiving some advanced notice from an Urgent Care that they will eventually be needing a transport, this would be optimal for the system. *Id*., 1352:8:1353:4.

s. With regard to CA-186 (the 30 minutes response mapping), there are facilities outside of that 30 minute response time that will require IFT responses, and RBR will not be able to get there in 30 minutes. Nor will it be able to get to an urgent Dignity transport if four of its ambulances are being used. It probably cannot get to the Abrazzo facility in Buckeye or the Urgent Care in Good Year within that 30 minute period of time. *Id*., 1354:24-1356:7.

t. RBR has done no studies or analyzes to determine whether it would be able to meet the Laveen Hospital's IFT arrival desires. *Id*., 1356:14-20.

u. RBR will not necessarily post an ambulance at Laveen General Hospital; that would depend on call volume. *Id*., 1363:6-11.

v. RBR is not going to be able to arrival in 30 minutes or less for every transport out of Queen Creek or Ahwatukee's Urgent Care centers. *Id*., 1356:21-1357:1.

w. For certain urgent transports, 911 can be the appropriate resource to call. *Id*., 1357:2-24.

x. No consideration was given to how long distance transports ("LDT") might impact RBR's operations; RBR received no information from Dignity regarding how often it has LDTs, for example, to Flagstaff or Las Vegas. An LDT will change operations for a long period of time, for example, maybe 14 hours in order to take a patient to Las Vegas, offload and return. *Id*., 1357:25-138:25.

y. Rogers hopes to grow the RBR Arizona company from its year one size. *Id*., 1365:11-1367:3.

z. Rogers misunderstands Arizona's regulatory requirements for annual reporting. *Id*., 1368:3-1369:11.

aa. The RBR-Dignity contract's 90% compliance "fudge factor" for IFT arrivals is important to Rogers/RBR. *Id*., 1370:3-1371:8.

bb. If all of RBR's intended Maricopa County ambulances are busy, bringing another ambulance in from Nevada would not be a solution, as it would take many hours. *Id*., 1373:14-1374:7.

AT THIS POINT OF THE HEARING, COMMUNITY AMBLANCE/RBR RESTED ITS CASE-IN-CHIEF. *Id*., 1377:17.

FINDINGS OF FACT; INTERVENORS' PRESENTATIONS

22. ***Neal Thomas*** is the founder and CEO of ABC Ambulance. RT, V6, 1388:24-1389:10; ABC-57. During his testimony, the following exhibits were admitted: ABC-1, 7 through 9, 13 through 17, 23, 26, 29, 57, 59, 60, 81, 84, 87, 89 and 90; CA-17 and 221. Thomas additionally established the following:

a. Thomas testified to his background, education and experience, including his finance degree and experience in doing behavioral health transports. *Id*., beginning at 1389:11.

b. ABC's CON service area covers all of Maricopa County with the exception of four carve-outs, for Buckeye Valley, Sun City [North County], and Intervenors Life Line and Canyon State. These were carved out because of Thomas's understanding that to the extent there were IFT transports in the areas, ABC taking those IFTS would negatively impact those CONs and the rural areas they service. *Id*., 1329:13-1394:20; 1490:20-1491:8.

c. ABC's staff receives specialized training for behavioral health transports; and ABC has invested more than $2 million worth of capital investments into its operations. *Id*., 1395:3-1396:22; 1397:20-1398:18.

d. Thomas is willing to have ABC contract for IFT response (arrival) times, even though there are none on ABC's CON. Specifically, ABC would have no problem agreeing to the response (arrival) times found in the Dignity/RBR proposed contract (CA-17). Id., 1399:12-1400:9. Thomas compared a sample of ABC's arrival times to demonstrate ABC's ability to so comply. *Id*., 1400:17-1404:23.

e. Prior to ABC receiving its CON in May 2015, upon learning about the Dignity Request For Information, Thomas emailed O'Malley, telling him if he did not find what he was looking for via the RFI, Thomas would be willing to sit down and create a great system if Dignity needed the help. *Id*., 1407:1-1408:23. Then, after receiving the ABC CON, Thomas spoke with O'Malley by phone telling him the anticipated Dignity volume/kind of relationship Dignity was looking for fit right in ABC's wheelhouse and capacity. However, O'Malley communicated his intent to proceed with RBR's business plan regardless of this offer. *Id*., 1410:8-23; 1411:4-1414:25.

f. Then, on March 1, 2017, Thomas met with O'Malley in Phoenix to discuss RBR's application for a CON, and ABC possibly providing backup service. No such agreement was struck because O'Malley conditioned this on ABC not intervening in the instant proceeding. *Id*., 1415:8-1416:13.

g. In 2017, approximately 54.8% of ABC's business came out of the Mercy Care organization. Through August 2018, the percentage was approximately 47.9. Given Dignity's 50% ownership in Mercy Care, and Linda Hunt's testimony, Thomas expects to lose this business if Dignity gets a CON for RBR. *Id*., 1418:5-1421:44; ABC-7; *see* also, *id*., 1425:5-25 and ABC-25.

h. Thomas also testified to the negative financial impact ABC expects if RBR gets the proposed CON and Dignity does cause Mercy Care and Mercy Maricopa transports to be done "in network" by RBR, projecting a pretax loss of $1.2 million, and a net income (after taxes) loss of $726,000. *Id*., 1431:3-1432:10; ABC-81. That calculation is based on current rates. If the rate increase ABC has applied for is granted, there will still be a loss of more than $700,000 in net income. *Id*., 1433:24-1441:24; ABC-90.

i. Participation in the AZ-PIERS system means all transport data goes directly to DHS. This includes all patient data, all times that go into an ambulance run. *Id*., 1506:6-7; 1507:4-10.

23. ***Mark Nichols*** is the Fire Chief for Daisy Mountain (RT, V6, 1444:2-20). During his testimony, AMR-19B was admitted. He testified regarding the letter of support he signed (ADHS-24), as follows:

a. A meeting he attended involved a presentation by Dignity and Community Ambulance representatives about the RBR CON Application. *Id*., 1446:7-11. After that meeting, Mark Burdick (EMS Advisors) emailed asking for support and provided the form letter/template that was signed. *Id*., 1447:5-1448:19; 1459:22-1460:3.

b. Nichols agreed, as he was told the Application was only for authority to do IFTs for Dignity Health, that the service area requested would be Dignity facilities. *Id*., 1447:5-1448:19. There are no Dignity facilities in the Daisy Mountain service area. *Id*., 1459:11-21. He saw no possible impact to Daisy Mountain. *Id*., 1462:12-1463:9.

c. Nichols did not confer with his fire board before signing the letter, and the letter never showed up in any fire board agenda item. *Id*., 1458:18-20; 1460:18.

d. Daisy Mountain provided no records other than its letter of support in response to AMR's public records request. AMR-19B.

24. ***Aaron Sams***, DHS/BEMSTS's CON Manager, was called by the Bureau to testify regarding the rate analysis he did for RBR when he previously was a Bureau rate

analyst, his (2) meetings with Matt Karger (Dignity) and regarding certain regulatory aspects of the hearing. RT, V6, beginning at 1556:21. During his testimony, exhibit ABC-61 was admitted. In addition to testifying to his history, experience and current duties with DHS, (*id*., beginning at 1556:10), Sams testified to the following:

a. RBR's Application is for only IFT and convalescent transports, which from the Bureau's perspective is unique because no other hospital system has an IFT only CON. One other healthcare system in Arizona does have a CON, but is for a larger service area and also covers 911 transports. *Id*., 1557:20-1558:8.

b. IFT is defined as "a scheduled transport between two healthcare institutions." "Schedule transports" are transports where a patient is conveyed "at a prearranged time by a ground ambulance vehicle for which an immediate dispatch and response is not necessary." *Id*., 1558:19-1559:23; A.A.C. R9-25-901(25) and (39).

c. A convalescent transport is a scheduled transport other than an IFT that occurs not between two health facilities. The typical convalescent transport is either from a home to a facility or a facility to home. *Id*., 1559:24-1560:17.

d. By definition, DHS's regulation of IFT providers does not include holding them to "response times." *Id*., 1560:21-1561:2.

e. IFT "arrival times" are not defined by statute or regulation; they came about when AMR filed its initial application for a CON and requested that it be held to arrival times on that CON, which the Director adopted. *Id*., beginning at 1562:10.

f. RBR's Application for a CON did not request that it be held to any IFT arrival times. *Id*., 1564:5-7.

g. Backup agreements are found in regulations at R9-25-901(5). These are written agreements between two neighboring CON holders for temporary services during limited times when the provider has no ambulances available. This arrangement is supposed to be infrequent, not a regular plan of providing services. *Id*., 1568:2-23.

h. DHS's CON Guidance Document (ADHS-15) is published in order to allow the public to know how the CON system works in Arizona. Section 1 describes why there are CONs. The foremost issue, from DHS's perspective, is that all residents have access to ambulance services. *Id*., 1569:15-1570:23. The second sentence of Section 1, regarding the Department's concern that ambulance transport providers have sufficient financial strength and volume of business, is important in order to ensure that CON holders can provide the authorized service throughout their required service area; this is related (in part) to the financial impact on existing providers of a new (proposed) CON. *Id*., 1570:24-1571:12. The last sentence in Section 1, stating that the CON system is not intended as a limitation on ambulance providers, has to be read in context with the public necessity requirement – that a CON applicant must demonstrate public necessity for its proposed services, and ensure protections for citizens living in the rural areas within its proposed service area. *Id*., 1571:20-1572:15.

i. Section 4 of the Guidance Document outlines how the public necessity determination will be made. In summary, the focus is to protect the public, based on the needs of the public in a specific area; this includes the adequacy of existing services, and the goal of ensuring cost control (that rates and charges will not be impacted by the proposed CON's operations). *Id*., 1573:11-1574:25. Following this discussion, there are seven bullet points outlining multiple aspects that DHS requires in connection with a CON. *Id*., 1575:1-11.

j. Section 5 of the Guidance Document, discussing IFT arrival times, was added after AMR received its CON and the IFT arrival time concept was developed out of that hearing. *Id*., 1576:13-1577:10. There are two different definitions, urgent and non-urgent, for IFT arrival times. Each contemplates that the transport would be a prearranged or scheduled transport. *Id*., 1577:11-15

k. Sams attended both the May and June 2018 meetings that RBR's witness, Matt Karger, testified to. The first was held at the Laveen General Hospital and addressed IFT arrival times, billing and 911 use. AMR was not invited to the meeting. Dignity employees did complain about AMR. They were told the Bureau would investigate if they made a complaint, but Dignity did not follow-up and do that. *Id*., 1578:1-1579:22. Also at that first meeting, it was apparent Dignity's billing issue came down to a "misconception" on how AMR was billing. As described to the Bureau, the Bureau saw no issues with AMR's methodology (billing or collections). They told the folks from Laveen that what AMR was doing was an accepted and expected practice. *Id*., 1579:23-1580:16. The Dignity employees also stated that "in their opinion" they could call 911 when ambulance IFT arrival times were delayed. The Bureau told them that because of their hospital license, they should not be doing that. *Id*., 1580:17-1581:4.

l. The second July 2018, meeting with the Laveen staff/Dignity employees/Karger was held at DHS/BEMSTS. Most of the meeting focused on Dignity's billing complaints, although AMR's IFT arrival times were also a topic. The Bureau again told the Dignity representatives they could file a complaint about arrival times, which they chose to not do. Billing was basically a reiteration of the prior communications, with more detail about how a patient can be required to collect information to submit to its own insurance company if the patient feels a transport should be covered. At the conclusion, from the information Dignity had provided, the Bureau could not see that AMR had been doing anything wrong with regard to billing. *Id*., 1581:6-1582:8.

m. People that call DHS to complain about ambulance transports "mostly" complain about bills. *Id*., 1584:4-10.

n. When asked whether under a backup agreement, a provider could go outside of its own CON service area to pick up a patient, Sams replied

that would be possible if "health and life" depended on this; however, the Bureau does not want to see this as a frequent occurrence. *Id*., 1583:3-10.

o. The Bureau's definition of IFT arrival compliance, as seen on Maricopa Ambulance's CON (CA-43), is the provider must arrive to a non-urgent transport within 60 minutes of the agreed upon arrival time at least 90% of the time. If the provider falls below that 90%, that would be non-compliant. *Id*., 1587:25-1588:23. The Dignity witness employees that testified in RBR's case-in-chief did not calculate arrival compliance this way. The "we call and then we want you here right away" is not how DHS will evaluate compliance. *Id*., 1588:24-1589:10.

p. In connection with a CON application, or proposed contract, DHS will not approve unrealistic IFT arrival times; it has to evaluate all aspects of operations to determine whether the proposed arrival times would cause any negative upward pressure on rates. *Id*., 1590:12-21.

25. ***Exhibits Admitted by Stipulation*:** Immediately following Sams' testimony, certain exhibits were admitted by stipulation, as follows: AMR-4A through E, 5A through E, 6A and B, 7A through F, 9, and 52; CA-239; MA-2 and 11. *Id*., beginning at 1598:1.

26. ***Mickeul Bryan Gibson*** is the CEO for Priority Ambulance, supervising operations at a high level in 11+ states, including (the subsidiary) Maricopa Ambulance in Maricopa County. RT, V7, 1623:11-21; 1699:10-16. He testified to his background and experience in the ambulance industry (*id*., beginning at 1623:22). During his testimony, the following exhibits were admitted: CA-139 and 141; and MA-20, 21, 29, and 31 through 35. His testimony included the following:

a. Maricopa Ambulance's CON, received in August 2016, authorizes all forms of transport in Maricopa County (with a few carve-outs) and commits Maricopa Ambulance to IFT arrival times. *Id*., 1624:24-1626:20; CA-43.

b. The contract RBR has with Maricopa Ambulance (under review by DHS) is not a "preferred provider" contract. Gibson understands the Dignity transport volume is currently between 11,000 and 18,000 per

year. Maricopa Ambulance has the financial and operations capacity to service those transports while meeting its other CON obligations. Maricopa Ambulance is currently doing Dignity transports and is already scaling its operations to accommodate the Dignity volume. *Id*., 1621:25-1632:14.

c. With regard to the financial impact of RBR being granted the CON it has applied for, all current (existing) providers in Maricopa County are dependent upon the economics of the existing system. If chunks of system revenue start being pulled out, the providers who are mandated to serve the 911 system, to serve unincorporated areas, will still have their fixed costs. With the loss of revenue, those costs become more expensive and can make rates rise. The entire system itself will suffer the negative impact. *Id*., 1632:15-1633:22.

d. The benefit of a Maricopa Ambulance contract with Dignity is the 30% discount on transports Dignity is the payor for. The arrival criteria are the same as what are required by the Maricopa Ambulance CON. *Id*., 1669:25-1670:11.

e. If Dignity requested, during contract negotiations, that all Maricopa Ambulance's ambulances have the same equipment, and gave a list of that equipment, Maricopa Ambulance would meet the requirement, assuming the State approved it. *Id*., 1684:16-23.

f. Gibson believes that the existing Maricopa County ambulance providers have the capability to handle all IFT and convalescent transports in Maricopa County, and that a new provider would denigrate the system to some degree, causing Maricopa Ambulance to be less efficient, causing an overall negative financial impact to the system, and probably requiring a rate increase due to fixed costs being supported by less transports. As the Dignity system grows, that negative impact would increase. *Id*., 1692:19-1693:7; 1699:20-1700:20; 1704:15-1705:7.

g. If Dignity sole sources its transports to itself (RBR), there will be no competition regarding its transports. *Id*., 1714:3-10.

h. Maricopa Ambulance competes with other CON holders in Maricopa County, including the AMR organization. Just because it wins a contract does not mean it believes AMR will fold up and go away. Rather, it expects AMR will come back and compete very vigorously for the business. In the ambulance transport industry, all companies win some business and lose some, that is normal. *Id*., 1715:14-1716:6.

i. Maricopa Ambulance is not spread too thin in Maricopa County to do the Dignity transports. It has the experience and the money behind it to add those in. *Id*., 1719:5-25.

27. ***Roy Ryals*** is an ambulance industry consultant. RT, V7, beginning at 1721:4. During his testimony, the following exhibits were admitted: MA-10, 27, 27B through E, 28A, 30 and 36A through E. His testimony also included the following:

a. Mr. Ryals' EMS/ambulance experience dates back to 1968. Since October 2013, he has been consulting, including performing feasibility studies and needs assessments for political subdivisions. *Id*., 1721:4-1722:23.

b. Through analysis of the Dignity EMS logs (handwritten), Ryals opined that Maricopa Ambulance would have had units available at times when 911 was utilized or ETAs in excess of 30 minutes were given (for urgent transports) or ETAs of 60 minutes or less were required (for non-urgent). *Id*., beginning at 1723:11.

c. Ryals did a unit hour utilization ("UHU") analysis of RBR's proposed operations. UHU is a measure of efficiency. He compared ABC (.21), AMR Maricopa (.21), PMT (.22), Maricopa Ambulance (.24) to RBR (.27). In doing this, he noted that RBR projects zero canceled runs, which simply does not exist in this system (calling its efficiency further into question). *Id*., 1734:10-1739:6.

d. RBR's/Community's UHU is the outlier, it is unreasonably high and allows him to conclude that with 4.5 ambulances spread over a wide geography, "[i]t is a statistical and absolute improbability" that (1) RBR

will be able to achieve the level of UHU their ARCR shows and (2) RBR will be able to achieve the response (arrival) time performance that is contemplated either by DHS's Guidance Document or by the proposed contract between Dignity and RBR. Thus, one of two things will happen: RBR will either not be able to do the transports its ARCR shows or RBR will achieve its response criteria but for many less calls than its ARCR shows. *Id*., 1741:15-1742:10. Overall, RBR will not be able to meet the transports its ARCR proposes within the time frame its contract with Dignity contemplates. *Id*., 1744:11-22.

e. Ryals is aware that the letters of reference given to DHS for RBR's operations state that RBR will enhance the 911 system. He disagrees. He believes exactly the opposite will occur because AMR and Maricopa Ambulance have much larger fleets than RBR will have. Their call volume is important to their deployment plans. If RBR reduces that call volume by using 4.5 ambulances spread over the Phoenix valley, RBR will not be able to serve the Dignity work in a timely manner, which means Dignity will need to call AMR and Maricopa Ambulance. AMR and Maricopa Ambulance will not be pre-positioned to respond, so the Dignity UCs will use 911 more frequently, not less frequently. *Id*., 1744:23-1747:1.

f. A second reason Ryals disagrees with the "support 911" statement is that when a provider has a mix of 911 and IFT resources dedicated to an area, it can do "surge deployment," meaning the provider can pull units from its IFT resources when the 911 system surges. RBR is not going to do any 911 work, and the other CON holders in the system will have to reduce the overall number of IFT units available from them, which means there will be fewer ambulances to back up 911. *Id*., 1747:6-1748:18.

g. Mr. Beery's mapping does not accurately reflect response (arrival) times for RBR in its proposed service area because (1) the drive times are not entirely accurate – for example, there are different morning versus

afternoon rush hour times; (2) UHU analysis reveals that 31% of the time there will not be ambulances in RBR's sub-operations stations; (3) Beery's mapping just shows drive time, and arrival times have to include other portions of the service such as the period between when a call comes in and the crew actually leaves a substation. *Id*., 1748:20-1753:3.

h. Beery's mapping cannot be used to design a system for either 911 or IFT transports, the mapping is basically useless. *Id*., 1812:4-10. Beery's mappings also do not show that RBR could serve all Dignity transports in 30 minutes or less (from receipt of the call). That is impossible. *Id*., 1812:24-1813:6.

i. RBR's 4.5 staffed ambulances plan cannot serve the stated "needs" of the Dignity facilities. Further, having only one ambulance in reserve is inadequate. Using a 133% of peak load capacity is a better measure. Using 5 as the peak load here, that means there must be 1.65 ambulances in reserve. Even that is "iffy" because if one ambulance is out of service for routine maintenance, and another has a mechanical problem, there is no second ambulance to utilize. *Id*., 1753:5-1754:21.

j. One cannot compare, say, Nevada UHU to Maricopa County UHU because there might be a high volume in a small geographic area (Nevada) as compared to widely dispersed Maricopa. *Id*., 1803:4-21.

k. The current ambulance system in Maricopa County is operating well, the system's needs are being met. *Id*., 1812:1-3.

l. "Cream skimming" means someone is taking the best paying transports out of the system, to the exclusion of other transports. *Id*., 1817:5-13.

m. Dignity will have patient PHI (referring to ADHS-12), and will therefore be in a position to choose lower risk patients. If Dignity/RBR has a limited number of ambulances available for transports, and if volume exceeds those, it then will have to triage which transports it (RBR) is going to do and which it (Dignity) will give to other providers. Dignity

will have the capacity to choose the better paying transports for RBR, referring the higher risk (for payment) out. *Id*., 1817:25-1822:2.

n. In the ambulance industry, "cream skimming" is a "very pejorative" term. The two most common ways to cream skim are (1) take the high efficiency, in terms of revenue, producing transports and accept no responsibility for low efficiency (revenue), which is most commonly called 911 (where a provider has no background and no information about the patient, and a significantly higher bad debt); and (2) geographic cream skimming which involves deploying to the center of a high efficiency area, leaving the peripheral areas to other providers, which is what RBR's witnesses seem to say they will be doing – concentrating on the center of Maricopa County and leaving the edges to the existing providers. *Id*., 1822:11-1823:25.

o. Based upon Ryals' experience, in a system where there is a mix of hospitals, freestanding ERs and a plethora of UCs, he estimates the overall percent of urgent versus non-urgent IFTs is that only 10% to 15% would be urgent. *Id*., 1828:1-1830:3.

28. ***Jim Roeder*** is the Regulatory Manager for AMR's Arizona operations and has been in the ambulance industry since 1994, focusing on regulatory compliance since 2001. RT, V7, 1837:8-1838:4; AMR-1G. During his testimony, the following exhibits were admitted into evidence: AMR-1G, 6C, 8, 19C and G, 44, 73A and B, 75 and 84. Mr. Roeder gathered information for various exhibits admitted during the course of the hearing. His testimony (and those exhibits) also included the following:

a. The November 27, 2017 Decisions consolidating (1) ComTrans Ambulance and Emergency Medical Transport/American Ambulance into PMT (CON 71), and (2) consolidating Southwest Ambulance of Casa Grande and SW General into AMR of Maricopa (CON 136), were based upon the fact that when the AMR parent organization took ownership of the Rural/Metro affiliated Maricopa County CONs it agreed to consolidate in order to simplify reporting and increase transparency, and because additional CON holders had entered the Maricopa County

market since that Rural/Metro acquisition. AMR-6A-016 and 6B-019. At the time of the OAH hearing on both of those consolidation applications, two private entities and approximately eight fire districts/departments had been granted CONs with service areas overlapping all or part of the AMR affiliated CON holders. AMR-6A-017, 6B-020. As the Administrative Law Judge found there, "[t]hese new CON holders are taking calls that the Applicants used to take, and in some cases, [became] the primary responders in their service areas, with the Applicants becoming back-up or secondary responders. As these new CON holders add ambulances to service, the Applicants must take units out of service and change their deployment models." *Id*. The addition of the new CON holders had reduced the AMR affiliates' call volume in certain areas and had negatively impacted the time it took certain AMR affiliates to respond to certain rural areas. *Id*., 6A-018, 6B-020 through 021. Further, additional changes to the system were expected in connection with additional CONs being issued. *Id*. Consequently, the consolidations included certain changes to the response time parameters for CON 136 and CON 71 (and the CONs that were consolidated into each). AMR-6A-003 through 004 and 021 through 022; AMR-6B-003 through 004 and 024 through 025; *see* also, RT, V7, 1838:19-1841:23.

b. Previously the majority of CON 71's responses were required to be made within 20 minutes 100% of the time[11]. CON 46 required that 100% of the responses be made within 25 minutes (in addition to the lower fractiles). With consolidation into CON 71, those 100% compliance requirements were changed to 97% within 20 minutes. AMR-6C-001.

[11] Roeder testified that the Section B part of CON 71 was a rural area with a very small number of responses. *Id*., 1840:9-13.

c. The change to response time compliance parameters for consolidated CON 136 was more pronounced. That change also included the shift from a 100% compliance within the "20 minutes or less" parameter to 97%. AMR-6C-002. The 10 minute fractile for previous CON 136 and one section of CON 86 dropped from 90% to 80%. CON 136 and the same section of CON 86's 15 minute fractile also dropped from 95% to 90%. These times relate to cities and towns where CON 136 is the primary provider of 911 ambulance services. Compare AMR-4E-003, Section 3, I. Otherwise, CON 136's 911 response parameters (as consolidated) require a 30 minute response on 97% of ambulance calls, 20 minutes on 90%, 15 minutes on 75% and 10 minutes on 50%. *Id*. This is also a significant extension of the required 911 response parameters as compared to previous CON 136 (requiring 20 minute responses on 100% of all calls, 15 minutes on 95% and 10 minutes on 90%), the identical parameters for Section A of CON 86, and the remaining two sections of CON 86 and CON 66. AMR-6C-002; *see* also, RT, V7, 1838:19-1841:23.

d. Subsequent to AMR receiving CON 136 in February 2015, two private providers were issued CONs in Maricopa County (ABC in May 2015 and Maricopa in September 2016), and eight governmental entities were issued CONs located entirely or in great part in Maricopa County (Superstition in March 2015, Mesa in July 2015, Surprise in August 2015, Rio Verde in November 2015, Gilbert in February 2016, Queen Creek in March 2016, Sun City in May 2016, and Peoria in June 2016). *Id*., 1842:9-1843:2; AMR-8.

e. To address the letters of support for RBR's CON Application sent to DHS by various governmental entities (ADHS-16 through 21, 23 and 24), Mr. Roeder was responsible for making public records requests related to the Town of Gilbert's and the City of Chandler's letters. RT, V7, beginning at 1843:8. These public records requests included a copy of the at issue letter of support and requested various categories

of information, including all records relating to communications relating to the letter, any other items related to the letter, records relating to or supporting certain statements of opinion or "fact" in the letter, and any records showing that the letters had been authorized by the appropriate person or entity, such as City Manager, Board of Supervisors, City Council, etc. *Id*.; AMR-19C and 19G. Neither response contained any documents showing authorization by the appropriate governmental organization/manager. Neither response contained any documents relating to any of the substantive statements of "fact" or opinions made in the letter. Instead, the only responsive items were documents demonstrating that the Town of Gilbert letter had been solicited by Dignity and/or EMS Advisors, that a "form letter" had been provided to each, that Gilbert's Mayor made no changes to the form letter delivered to her, and that the Chandler Fire Chief's letter was also essentially identical to the Gilbert letter (no documents provided in the Chandler response included the template delivered to Chief Dwiggins). *Id*., 1843:8-1849:25; AMR-19C and G.

f. Using information from DHS's website, Roeder calculated the number of ambulance transports done by Maricopa County CON holders (which does not include Intervenors Canyon State or Life Line, as they cover very small portions of outlying rural Maricopa County – *see*, AMR-4A and 5A, 4B and 5B). This chart allows a comparison of total transports by year, showing that for all of the Maricopa County CON holders listed, the total transports (as reported by ARCR) was 304,274 in 2013; 310,640 in 2014; 321,170 in 2015; 321,515 in 2016; and 322,157 in 2017.[12] *Id*., 1850:6-1863:14; RT, V9, 2309:14-2310:22; AMR-84. This

[12] No ARCR filings were available for Gilbert, Tempe and Queen Creek. However, Gilbert does very few transports, Queen Creek had not been running any calls, and Tempe only has two ambulances, and is probably doing "some." These entities made no response to AMR staff inquiries requesting transport numbers. Roeder's initial calculations (from when he first put the exhibit together) were not entirely consistent with current DHS figures (which

is significantly less than even a 1% change per year from 2015 forward. Given the fact that CONs 62 (Life Line) and 58 (Canyon State) were not shown to have done any significant number of Maricopa County transports and the fact that each of these CON holders were excluded from all years shown, the exclusion of CONs 62 and 58 would not have any material impact on the 2015 forward trend shown here.

g. AMR Maricopa (CON 136) and PMT (CON 71), both hold IFT/convalescent authority for all of Maricopa County (plus CON 136 covers a portion of Pinal County); Rural/Metro (CON 109) covers a portion of Maricopa County (IFT); Roeder is aware of at least thirteen other Maricopa County CONs that contain IFT/convalescent authority: Superstition Fire, Mesa, Queen Creek, Gilbert, Tempe, Phoenix, Surprise, possibly Peoria, North County (aka Sun City), Daisy Mountain, Sun Lakes, Buckeye Valley, and Intervenors ABC and Maricopa Ambulance. RT, V7, 1864:8-1866:21.

h. Roeder utilized Medicare's designation of certain zip codes as super rural and rural, identified those on a map of Maricopa County, and then roughly estimated witness Beery's "drive time mapping" for RBR's four combined sub-operation stations. There are significant rural/super rural (as defined by Medicare) areas in Maricopa County that are not within the drive times plotted by Mr. Beery; Roeder also testified to various healthcare facilities that might require interfacility transports outside of that drive time area, including at least one in each Buckeye, Goodyear, Anthem, northeast of the greater Phoenix urban area, and Mesa. *Id*., 1868:7-1873:21; AMR-75; *see* also, CA-186.

29. ***Ed Armijo*** is the Director of Compliance for the AMR organization's Arizona CON operations. RT, V7, 1885:7-1887:2; AMR-1H. Armijo testified regarding his work experience with ADHS / and otherwise in regulatory compliance. *Id*. During his testimony,

---

had changed subsequent to the time Roeder first put his document together). This led to submission of a corrected calculation – AMR-84.

the following exhibits were admitted: AMR-1H, 18A through E, 19A, 19D through F, 48, and 49A and B. His testimony also included the following:

a. While not an easy task (one that included driving to physically check certain addresses), Armijo - with the assistance of Jim Roeder, checked calls for transports coming out of addresses (i) associated with Dignity Health facilities, (ii) going to addresses associated with Dignity facilities, and (iii) those done between those two classes, in order to calculate all Dignity affiliated transports that the AMR organization had done (primarily in Maricopa County, with a very small number in Pinal) during calendar years 2016, 2017 and during the first three months of 2018 (which was then annualized). This is primarily an accounting of IFTs, with some small number of convalescent transports possibly included. For 2016, the total transports either going to a Dignity facility or originating from a Dignity facility was calculated as 18,140. For 2017, it was 18,941. The first three months of 2018 calculated to 4,665 (which is annualized to 18,660). Armijo believes that this is as accurate a summary as is reasonably available, including the assumptions outlined on AMR-18E. *Id*., 1807:4-1903:13; RT, V8, 1959:19-1960:12; AMR-18A through E.

b. Armijo submitted public records requests, essential identical to those done by Jim Roeder, to the governmental entities (other than those Roeder communicated with) that signed letters of support for RBR's CON: he submitted the requests to Avondale, Daisy Mountain, Phoenix, Mesa, and Tempe. Each of the requests asked for all documentation evidencing communications related to the authorship of the letter, communications relating in any way to the letter, documents that would relate to any of the factual statements and/or opinions expressed in the letter, and any documentation showing that the letter had been authorized by the appropriate person or entity (such as City Manager and/or City Council, governing board). RT, V8, beginning at 1915:9; AMR-19A, B, D, E and F.

c. With regard to the Avondale Fire Chief's letter (ADHS-21), the response indicated the letter had **not** been written upon behalf of the City of Avondale, had been procured by EMS Advisors (Mark Burdick) who sent Chief Adams the proposed letter of support, and that the only change Adams made to the template was a minor verbiage change to the second paragraph. No substantive changes were made and no documents were produced showing any factual basis or support for any of the opinion or "fact" statements. *Id*., 1915:9-1918:22; AMR-19A.

d. With regard to the Daisy Mountain letter, no documents at all were received in response except the actual (final form) letter. *Id*., AMR-19B.

e. With regard to the Phoenix Fire Chief's letter (ADHS-23), approximately 140 pages were provided. However, nothing in those pages indicated the letter had been approved by the City Manager or City Council. There were emails showing that Mark Burdick (EMS Advisors) first requested the letter, sending the proposed form for signature, in August 2017; Jimmy Haden (EMS Advisors) sent another copy of the proposed letter in January 2018. Employees within the fire department did engage in some editing. However, the only responsive items provided that would relate in any way to the "fact" or opinion statements consisted of a significant number of Arizona Fire Department Association emails simply noting the fact of Dignity submitting an application for a CON for Maricopa County, emails noting that Dignity and other hospitals had formed a political advocacy group and also providing updates regarding various CONs being processed through OAH, and certain professional organization agendas and minutes mentioning diversion. Even the latter only noted this (diversion) as a phenomena occurring when population growth caught up to the area's hospital "buildout" in the mid-2000s, early 2010s. None of these items contained any indication that diversion was caused by anything associated with ambulance transports. None of these documents indicated anything about a need to add another ambulance provider to

the system or to add more ambulances. *Id*., 1919:8-1933:22; AMR-19D. The Phoenix Fire Department's policies on when they may and may not do an IFT were included. *Id*., 1934:9-1935:8. Also included was what appears to be a list of IFTs done by the City of Phoenix – three in 2016, two in 2017, and one in 2018. *Id*., 1935:11-21.

f. The public records request response directed at the Mesa Fire Chief's letter of support (ADHS-19) contained no documents indicating the letter had been authorized by the City Manager, the City Council, or any other appropriate person/entity. The only documents provided were emails with Mark Burdick (EMS Advisors) sending the proposed letter and asking for a signature. The first paragraph of the final letter is identical to the proposed draft, as is the fourth. Portions of the proposed second paragraph were deleted. The proposed third paragraph was deleted. No documents were provided responsive to the request for items supportive of statements/opinions set forth in the letter. *Id*., 1936:7-1939:19; AMR-19E.

g. The response to the public records request directed at the Tempe Fire Chief's letter of support (ADHS-19) likewise included nothing indicating it had been authorized by the appropriate person/entity at the City, and failed to provide records showing the providence of the letter (although it is so similar to the other letters solicited by EMS Advisors that it has to have been based upon the same form letter). It did include an Excel spreadsheet appearing to be Tempe Fire responses to certain calls, although it was impossible to tell the origin of the calls, and whether they were 911 or IFT. *Id*., 1939:23-1941:24; AMR-19F.

h. Intervenor Life Line (CON 62) did 14 transports from the Wickenburg Community Hospital to a Dignity facility in 2016; it did 17 in 2017, and it did 7 during the first three months of 2018. *Id*., 1942:2-1943:24; AMR-25.

i. From July 1, 2016 through June 30, 2017, AMR CON Holders did approximately sixteen 911 responses in the rural area outside of

Wickenburg, in the northwest portion of Maricopa County. This does not include Wickenburg responses. *Id*., 1944:2-1945:19; AMR-48.

j. Between July 1, 2016 and June 30, 2017, four AMR CON holders, including Prescott based CON 58, responded to 122 calls (911) in the northeast corner of Maricopa County (rural area), along or close to State Route 87, and 63 in the "lakes" area also in that northeast rural area. Between July 1, 2017 through June 30, 2018, those same areas had 49 and 76 calls, respectively. *Id*., 1946:10-1952:8; AMR-49A and B.

30. ***Glenn Kasprzyk*** is the Regional CEO of the AMR organization's Arizona and New Mexico operations. He has been in EMS since 1994, and in Arizona since 2006. He has experience with all types of ambulance systems from very rural to major urban. RT, V8, 1962:3-1963:14; AMR-1D. During his testimony, the following exhibits were admitted: AMR-1D, 15, 16A through D, 17A through E; CA-25, 29 and 31. Additionally, he testified :

a. It is his business to know what is going on in the ambulance industry in both Arizona and New Mexico. *Id*., 1963:6-9.

b. He believes RBR's CON Application is bad for Maricopa County because there have been a lot of changes to the system since AMR Maricopa entered: additional CON holders have entered (AMR-8), and there have been changes in healthcare and the delivery of healthcare. From a big picture perspective, with more CON holders coming in, services are being duplicated by various providers in some areas. They are starting to see this duplication causing an increase in rates and structures. Governmental entities receiving CONs are creating "silos," where they are only concerned about their own communities, while AMR has to cover the whole county. This creates logistical challenges, for example, when an AMR CON Holder has to respond to an area the governmental CON holder might be closer to, but will not leave its silo to cover. This development has already led to AMR Maricopa (CON 136) having to increase its CON response criteria. These changes are being felt in the Superstition, Northwest County, Surprise, and likely

Peoria areas. AMR has needed to change its deployment model to adjust to these new CON "silos," which inevitably require extended response times. *Id.*, 1963:23-1968:25; *see* also, AMR-6B, p. 19, ¶8 and, p. 20, ¶¶13-18.

c. AMR experienced the same phenomena in Pima County when CON providers were added: it was required to extend response criteria after it had to change its deployment. *Id.*, 1969:1-15; AMR-52.

d. In addition to the response time issue, there have been financial implications because the ambulance industry does not allow a one for one exchange when a new CON holder enters the system. Existing providers have to maintain infrastructure. Now, they are starting to see a significant number of recent CON holders asking for rate increases, which ultimately impact the end users. *Id.*, 1969:16-1970:3.

e. Gila Bend, Superstition Fire, the City of Mesa and perhaps Surprise have all applied for rate increases. *Id.*, 1970:4-14.

f. If this fragmenting continues, with more silos being built around discreet populations (for example, if Banner Health, Honor Health or Dignity capture the ambulance transports for their patient populations), this is likely to increase the cost of service via rates and charges. Kasprzyk believes this will also impact the overall system response times, impeding providers' ability to get responses to certain areas within reasonable or agreed upon times. The fluidity of the system will be impacted, which ultimately will impact both customer service and finances. *Id.*, 1970:15-1971:15.

g. When a customer wants enhanced equipment requirements, DHS might not approve these if providing them has a possibly detrimental impact on rates and charges. *Id.*, 1975:3-14.

h. The sheer volume of patients delivered to hospitals by ambulance transports, for example rapidly inundating a hospital during the peak season, does impact "bottlenecking." However, the pre-hospital system is not the sole cause. Other causes are staffing (available staff): if an

ambulance arrives and there are limited staff, the staff can only manage a certain number of patients and the ambulance attendants then have to monitor the patients on stretchers in the hallways; or there could simply be no beds available because the emergency room is inundated. Pre-hospital services is not a significant cause of bottlenecking. Bottlenecking in fact negatively impacts ambulance transport services due to the congestion. *Id*., 1975:17-1977:10.

i. The Centers for Medicare and Medicaid Services (CMMS) looking to EMTALA (the federal regulation of healthcare, primarily hospitals) has taken the position that bottlenecking/delayed offloading is not an EMS caused issued. *Id*., 1977:11-1978:10; AMR-15.

j. Locally, the Maricopa County system is stressed every year during the wintertime when patients experience delays in emergency rooms, where there are offload delays, diversion, and hospitals at capacity. In 2017, Mr. Kasprzyk thought it was important to engage hospital leadership about this and some meetings did ensue. Those discussions and meetings continued into the winter of 2018, but the people involved in the discussion had no standing to enact changes or elevate the issues to hospital leadership. Consequently, Kasprzyk reached out to Mesa's Fire Chief and proposed a letter to hospital leadership ("C-Suites"). There was enthusiasm for the same, in order to express pre-hospital providers' position on offloading / bottlenecking / hospital congestion. Kasprzyk authored the first draft; the intent was to ask hospital leadership to schedule a meeting to discuss how to address the concerns, such as ambulances getting stuck in hospitals waiting to offload patients. Kasprzyk wanted to move forward so all the stakeholders in the system could meet and discuss. The letter was circulated, the busy season ended, and the issue got "punted" to the following year. *Id*., 1978:14-1988:19; AMR17A through E.

k. Population growth does not translate into ambulance transport growth on a one-to-one basis. Ambulance transport growth will depend upon

the demographics of the community and notions about access to healthcare are changing. There are currently more tools to connect to primary physicians, more availability (points of access such as urgent cares), and changes in patient self responsibility due to higher insurance deductibles. The traditional mindset of calling 911 has changed. The growing millennial population has seemed to have little to no impact on increasing ambulance transports. These people are inclined to use alternative forms of transportation. Nationally the discussion is about the impact of services like Uber on ambulance transport numbers. Uber and Lyft are taking people who are having medical emergencies. Plus, they are developing medical transport segments. *Id*., 1988:21-1991:25; AMR-13A through H.

l. In the early spring of 2018, Gila Bend was unable to reach agreement with its ambulance transport provider (Buckeye) and a critical point came where no services were going to be available. The Bureau asked Maricopa County providers to apply to help. Only AMR stepped up. It ran the system for 90 days, under temporary authority (which was required because the community had a higher base rate than the Uniform Maricopa County Rates due to its rural nature). AMR did this at a "significant loss" because of its commitment to the greater Maricopa County community. *Id*., 1992:3-1994:9. If AMR keeps getting spread thinner and thinner (due to more CON holders being given authority), it might not be able to offer this type of public service in the future. If the system continues to be diluted, especially when considering the challenges of serving rural areas, there could be a huge future impact. *Id*., 1994:10-25; AMR-9.

m. When the Governor recently entered his order directing DHS to report critical opioid overdose information, AMR was the first onboard to work with DHS. It mobilized its clinical teams to review its ePCR data platform, to make sure the settings allowed collection and reporting. *Id*., 1995:1-22.

n. Kasprzyk, because of his involvement with the Prescott based Life Line operation, has driven from Phoenix to Wickenburg a lot. From his experience, it is unrealistic to think that Wickenburg can be reached within 30 minutes from anywhere within the green areas plotted by Mr. Beery on RBR's "drive time" mapping. *Id*., 1999:15-2001:6.

o. AMR is not contending that Life Line's loss of Dignity patient transports out of the Wickenburg hospital (to RBR) would cause any appreciable financial impact, it is purely an operational concern. *Id*., 2001:7-16.

p. With regard to the northeast sector of Maricopa County (and CON 58), there also is no contention that this would cause any adverse financial impact. The concern is purely operational. *Id*., 2001:17-2002:3.

q. When Dignity and AMR amended their contract in February 2017, Jeff O'Malley was involved in the discussions and Dignity made no request for any changes to AMR's data reporting requirements. *Id*., 2002:4-2003:8; *see* also, CA-25. There was also no dialogue about response (arrival) times. *Id*., 2085:3-12.

r. Jeff O'Malley's observation that Dignity's contract with AMR only gave Dignity what AMR's CON required for arrival time compliance is not true: CON 136 allows an annual average over the whole county. The Dignity contract narrowed that requirement to Dignity facilities, which is harder to accomplish. *Id*., 2003:9-2004:8.

s. Jeff O'Malley's desire for electronic record integration and adoption of Dignity core values by its ambulance transport providers are things that AMR could comply with, assuming electronic record integration is even possible, and assuming what was requested did not cause the Bureau concerns about costs negatively impacting rates and charges. *Id*., 2004:9-2005:23. Kasprzyk is unaware of anyone in Arizona having that kind of complete integration of medical records; he is also unaware of anyone doing this outside of Arizona. *Id*., 2005:24-2006:8. AMR's ePCR (electronic patient care reports) are already being transmitted to the facilities AMR serves. *Id*., 2006:9-14.

t. The "souring" of the AMR – Dignity relationship (as mentioned by O'Malley) was observed by Kasprzyk to come about once they disagreed about AMR's position on RBR's Application. The relationship changed. Dignity filed a lawsuit. AMR started to see an "artificial complaint environment." Before that, things had been good. AMR is certainly not perfect, and service issues do arise. Everyone in the industry gets patient complaints. *Id*., 2006:15-2007:16. Kasprzyk is willing to have AMR CON Holders move forward with a professional, productive, collaborative relationship with Dignity. *Id*., 2007:19-2008:4.

u. Kasprzyk is not saying Dignity should be forced to use AMR. But from what he has seen, AMR has been well within its response compliance and gave good customer service. There have been service issues, but all healthcare providers experience these, which does not equal bad service. If there are 2 or 3 patient complaints out of tens of thousands of transports, that is not bad service. That is expected. *Id*., 2058:18-2059:6.

v. AMR has a 90% compliance standard on its arrival times under its CON because it is unrealistic to say anyone can do anything 100% of the time due to variables such as weather. The goal in contracting is to put 90% in, and then try to exceed that expectation. *Id*., 2082:25-2083:13.

31. ***Scott White*** is an AMR Regional Director for Las Vegas area operations. RT, V8, 2097:8-13; AMR-1I. During his testimony, the following exhibits were admitted: AMR-1I, 31 and 32. He testified as follows:

a. Two AMR affiliates operate in Clark County, Nevada, branded as AMR and Medic West. Combined, they have approximately 125 ambulances and 870 employees. RT, V8, 2098:8-2099:4.

b. On a typical Sunday evening, at around 10:00 p.m. (correlating to the Harvest Festival tragedy), the Las Vegas system status plan requires approximately 45 staffed ambulances. *Id*., 2101:12-16.

c. When the mass shooting / Harvest Festival event occurred in Las Vegas on October 1 and 2, 2017, AMR sent a supervisor unit when it

first received a call. That was quickly amended into an active shooter event with a number of gunshot victims, and AMR sent a strike team (5 ambulances and a supervisor). As they saw the situation escalating, including it being reported as multiple shooters, off duty personnel were paged to come in to the station if they were available. Hundreds of people responded including EMTs, paramedics, the Medical Director, dispatchers, mechanics and supply personnel. This allowed 106 ambulances to be dedicated to the event, staffed by both on and off duty employees. *Id*., beginning at 2098:8; 2100:5-2101:12.

d. AMR also requested backup from neighboring Arizona and California, which given Las Vegas's relatively isolated location would involve 3 to 4 hour drives, especially because they were receiving reports of multiple shooters at multiple locations in Las Vegas. *Id*., 2101:18-2102:13.

e. While responding to the Harvest Festival tragedy, AMR's Las Vegas operations still had the resources available to handle regular ambulance transport business, which includes a "very busy 911 system." *Id*., 2102:14-2103:4.

f. The AMR response was not just to the Harvest Festival scene, but to locations victims fled to, and also involved moving people from hospitals that were overwhelmed, in order to decompress demand on the hospitals. This included AMR utilizing wheelchair vans and a nine passenger bus. *Id*., 2103:9-2105:2.

g. Some of the AMR ambulances had 3 to 4 crew members, in order to provide more personnel at the scene; some ambulances were taking more than one patient at a time (as many as 4). *Id*., 2105:10-24

h. The grand total involved 192 transports, moving 230 patients. These transports included 123 gunshot victims, as well as psychological / behavioral crisis issues, lacerations, cardiac events and a variety of other injuries. *Id*., 2106:8-13; AMR-31 and 32.

i. AMR assigned 383 of its employees to the event. *Id*., 2108:3-6.

j. Clark County Fire Chief Greg Cassell stated, "I have never seen so many ambulances." AMR-31.

k. For unexpected major events, such as the Harvest Festival, the AMR organization is the safety net for the Las Vegas area. This is not just because of the resources AMR has there; it includes AMR's ability to flex deployment with units coming in from Arizona and California. If this had been a worst case scenario, such as a terrorist-style attack, AMR would have also brought in fixed wing and rotary aircraft transports. *Id*., 2108:24-2109:16.

32. ***Richard Bartus*** is currently AMR's Executive Vice President of Revenue Management. RT, V8, beginning at 2112:8; AMR-1J. During his testimony, AMR-1J was admitted. His testimony included the following:

a. Mr. Bartus' experience in the ambulance business involves his entire professional career. He has worked in both the operations and business side. Since 1992, he has worked in fleet maintenance, as an EMT, in ambulance dispatch and call intake, in general accounting, payroll, corporate accounting, has been a Director, a Vice President of Finance, a Regional Chief Operations Officer, Interim Regional Chief Executive Officer, and a Regional Chief Financial Officer. He has a college degree in accounting and has ambulance collections experience. *Id*., 2111:18-2114:6; AMR-1J.

b. Ambulance companies are more likely to get paid for IFTs, as opposed to 911 transports, and are more likely to get paid for convalescent transports than 911 transports. They are also more likely to get paid for urban transports over rural. *Id*., 2114:7-18.

c. Bartus is familiar with the cost structure of owning an ambulance company. In comparing a business where a company does only convalescent/IFT work, as opposed to having a 911 component to its business, the 911 component "would generally drive up the cost to the

system as a whole" due to the cost of readiness that is required. *Id*., 2114:19-2115:9.

d. In Bartus' opinion, the Maricopa County ambulance system, as a whole, will suffer an adverse financial impact if RBR's Application is granted. *Id*., 2115:10-20; 2142:13-18.

e. The AMR system in Maricopa County will also suffer an adverse financial impact. *Id*., 2115:21-2116:1. To analyze this impact, Bartus looked at AMR's billing system (as opposed to the CAD system utilized by Ed Armijo to calculate the number of Dignity affiliated transports, AMR-18) in order to identify the total billable transports done as related to Dignity facilities in 2017, using actual collections and settlement information, and actual net ambulance revenue. *Id*., 2116:8-2118:25.[13]

f. For his year one AMR Maricopa County operations financial impact analysis, Bartus used the total transports from Dignity facilities (to Dignity facilities or to "other" facilities). For his year two analysis, he added transports from "other" facilities to Dignity facilities, assuming year one RBR would be ramping up and year two it would try to capture not just the transports originating at Dignity facilities, but any transport going to a Dignity facility from a non-Dignity facility, which he believes to be consistent with RBR's plan to capture all Dignity related transports. *Id*., 2120:12-2122:5; 2141:25-2142:12.

g. Overall, Bartus calculated a $7.1 to $7.3 million revenue loss in year one. By the end of year two, that loss would be approximately $10.6 million (involving approximately 18,900 transports lost to the system). *Id*., 2122:20-2123:5; AMR-54.

h. The year one and year two losses would be significant to AMR's Maricopa County operations due to the infrastructure investment. It is possible to make some operational adjustments due to not having to

[13] The difference between the CAD numbers and the billing system numbers is within a 2½% margin of error, which is not statistically significant. RT, V8, 2119:1-6.

staff the transports, but certain fixed costs such as rent and management cannot be reduced if an operator loses a small percentage of volume. Here, the AMR organization still has to cover all of Maricopa County, including its commitment to the 911 system. *Id*., 2123:6-2124:25.

i. The second phase of Bartus' analysis looked at the possible adjustments to costs that could be made, and then the bottom line. He did not include CONs 58 and 62 (Canyon State and Life Line) as they are statistically irrelevant to a financial impact analysis (CON 58 having no Dignity patient transports and those done by CON 62 being so minor). Instead, he looked at the seven CONs (now less than that due to the above-noted consolidations) that would have any significant impact, beginning with actual amended 2017 ARCR information, and analyzing each for fixed versus variable costs. He adjusted what costs could be adjusted and concluded that year one there would be a negative financial impact (overall) of $1,749,538. With the increased transports expected in year two, the negative financial impact would be $2,542,477. *Id*., 2125:1-2129:6.

j. Given his expertise, Bartus also opined that the staffing models RBR witnesses testified to means RBR is unlikely to be able to cover 100% of all Dignity affiliated transports. *Id*., 2131:7-13.

33. ***Doug Jones*** is the Vice President of Analytics and Operations Research for AMR, who holds an electronics engineering technology degree and has extensive experience in the EMS/ambulance transport business. RT, V8, beginning at 2144:3; AMR-1C. During his testimony, AMR-1C and 55A-P were admitted. His testimony established the following:

a. Jones helped develop and oversees AMR's Operations Planning & Analytics Platform (OPAP) which has taken approximately seven years to develop, which has been validated - including through the use of external consultants to ensure accuracy, and which is considered "very proprietary." It combines Computer Assisted Data ("CAD") with complex

but standardized data sets to build business rules for all of AMR's CAD systems and operations in order to create user tools, assist data reporting, assist schedule reporting, and perform other tasks such as unit hour management modules. AMR / Jones can use OPAP to analyze a system and any required parameters (such as the number of call responses that can be done within a particular time period). It allows Operations to make "closer to real time" operations decisions. It can be used to combine geo-spatial facts with demand analysis work. It can assist with analyzing operational adjustments needed if a known body of ambulance transports are removed from an overall system. *Id*., 2144:24-2148:22.

b. Jones reviewed and analyzed Beery's mapping (CA-186 through 189) and found those projections to be "overly optimistic representations," overly generous, and a "very positive outlook" of real traffic conditions. That kind of optimism "leads to failure." *Id*., 2148:23-2150:10.

c. Beery's analysis is "somewhat of a geo-spatial" analysis. In contrast, AMR would look at the minimum number of units needed to cover known geography and response criteria; Jones would identify a critical vehicle limit or level in order to know the number of ambulances an operation needs in order to be successful. Beery's mapping does not do this. *Id*., 2150:21-2151:23.

d. In order to do an on-time performance analysis, one needs a capacity demand analysis (including number of calls and number of ambulances needed to address that volume of business); then, one must do a geo-spatial analysis, ultimately combining the two. Without these two different perspectives, there will be a higher failure rate than is otherwise achievable. *Id*., 2151:24-2153:1.

e. The bottom line is that Beery's mapping does not inform how the RBR/Community Ambulance system will work. *Id*., 2153:2-4.

f. Jones and his team did both a capacity and a geo-spatial analysis of the Maricopa County system, including Dignity facilities, to try and help

local AMR operations understand the impact they will have as the result of the projected Community Ambulance removal of Dignity transports. *Id*., 2153:5-23.

g. If Community Ambulance adds six ambulances to the Maricopa County system, the existing providers cannot just pull six ambulances out, because there will be lost efficiencies. It will cost more in unit hours to cover the volume than would it cost without the loss of those transports. *Id*., 2153:24-2154:14.

h. The Maricopa County system is very complex and there are significant challenges to running that system successfully and efficiently. *Id*., 2154:15-23.

i. The loss of a 911 contract is not the same as the loss of transports associated with a single hospital system that is spread county wide. 911 contracts are for small, well-defined, self-sufficient areas. The Dignity hospital system has a vast geography where the impact of lost Dignity transports is hard to define, and will not be accompanied by any corresponding relief to the "geographic footprint" the AMR CON Holders have to maintain. *Id*., 2154:24-2156:3.

j. To model adjustments the AMR CON Holders' Operations must make to their system, as a result of the removal of an identified body of transports, one must eventually consider the financial impact of those lost transports. *Id*., 2156:4-19.

k. In analyzing the Maricopa County system, the business rules OPAP uses would include ADHS required response and arrival times, any municipal contract parameters, and preferred provider contracts; one would also talk to local operations about their perceptions and local realities, such as expected freeway construction. *Id*., 2156:20-2159:8.

l. If the Dignity transports are removed from the Maricopa County ambulance transport system, the AMR CON Holders will still have their CON requirements, their municipal contract requirements, etc. This will

be very challenging because the loss of the Dignity transports will not allow any geographic relief. *Id*., 2159:9-2160:5.

m. If RBR follows its proposed operations plan, having four 24 hour staggered ambulance shifts and one part-time (peak) ambulance scheduled noon to midnight, based upon Jones's knowledge about similar markets and the IFT business, Dignity will not be happy. Even without knowing the overall volume, the IFT business has predictable peaks and valleys, usually peaking around 3 to 5 p.m., which is also rush hour time. This is when hospital usage surges. RBR's model will waste unit hours through the night and not have enough unit hours during peak usage time. RBR has not given any consideration to predictable demand curves. The AMR organization does not staff like RBR projects it will. Instead, AMR builds demand analysis around historic five minute blocks of time. *Id*., 2160:5-2163:12.

n. The AMR organization's volume of ambulance resources in Maricopa County allow it an extra, built-in, backup plan, and it can constantly adjust resources in order to meet volume. As that volume of business gets smaller, the system will become more difficult to successfully manage. If volume is reduced, there is a reduction in the ability to keep customers happy. *Id*., 2163:13-2164:5.

o. To analyze the impact of the lost Dignity transports, Jones and his team did detailed OPAP modeling, including normal transport speed and congested transport speed, looking at how IFT traffic relates to 911 coverage, and examining different levels of ambulance availability (level 2 and level 3). This allowed formulation of a baseline. From that baseline, the Dignity facility postings that the AMR CON Holders currently utilize were removed, which quickly created holes in the middle of the more urban service area when a 30 minute response is desired/projected. Predictably, when the congested speed time of day was projected, that 30 minute hole became larger. This analysis also showed a negative impact to the 911 system, as the AMR CON Holders

will be taken out of position to cover a certain body of 911 traffic within the urban area. *Id*., 2164:6-2171:6; AMR-55A through P. The shifting IFT resources impact the 911 system because IFT is part of the overall 911 system backup plan. *Id*., 2171:7-14.

p. If Dignity and RBR do cooperate to pull all Dignity transports out of the Maricopa County system, the system's efficiencies will go down and it will take more unit hours to cover the same volume of calls. *Id*., 2172:11-22.

q. RBR's removal of 11,000 to 12,000 transports annually cannot be characterized as "no big deal." It is normal in the ambulance transport business to lose municipal contracts. That is usually temporary. The provider will have another opportunity to get that contract back. In contrast, the loss of Dignity transports will be a more permanent loss of business to the overall system. *Id*., 2172:23-2173:24. For example, if AMR loses a 911 contract like Scottsdale, there is a defined geography. That area is self-supporting, which can be unplugged from the system, without a lot of other things in the county-wide system being affected, in contrast to how the system would be impacted by the loss of IFT business having a broad geography. *Id*., 2191:24-2192:8. AMR will eventually rebid that Scottsdale contract, and hopes to get it back. In the meantime, the company will shuffle resources around the system to where the biggest needs are, and utilize that movement to help offset capital costs. *Id*., 2194:8-2195:5.

r. As part of his job, Jones looks at on-time performance of AMR operations all across the country. The (Maricopa County) AMR CON Holders' performance is some of the best in the country, "it's really good." *Id*., 2173:25-2174:11.

34. ***Todd Jaramillo*** is a Regional Director for the AMR organization, whose duties include oversight of Maricopa County's IFT market. RT, V9, beginning at 2206:13; AMR-1B. During his testimony, the following exhibits were admitted: AMR-1B, 22, 29, 30, 43A through C, 45, 72, and 76 through 80. His testimony also included the following:

a. Based upon his previous employment with the DHS (including when he was Chief of the Ambulance Certification and Enforcement Section), and then his work in the private sector with AMR, he is aware that before AMR's application for a CON, DHS/the Bureau had concerns about IFT ambulance services in "the Rural/Metro" area. Subsequently, AMR initiated the notion of IFT arrival time compliance (in 2015) and other municipal and private entities (including Maricopa Ambulance and ABC) also were issued CONs. *Id*., 2206:13-2209:16.

b. In the last couple of years, Jaramillo has also seen a local geographic evolution of ambulance transports. Hospitals have been expanding their footprints by adding freestanding EDs, UCs, etc. This means there are more facilities in the same geographic area. *Id*., 2209:17-2210:5.

c. With regard to the AMR CON Holders' IFT work, non-urgent transports predominate, making up approximately 95%, with urgent making up approximately 5%. They do approximately 240 to 300 IFTs per day. Truly pre-scheduled transports only make up approximately 7% of the approximately 95% of non-urgent responses. Pre-alerts (of the eventual need for a transport from a facility) only happen approximately 10% to 15% of the time, and are more frequently received from larger hospitals, as opposed to UCs or freestanding EDs. The pre-alert could be urgent or non-urgent. *Id*., 2210:6-2212:6; 2215:12-2216:5; 2295:10-2297:24.

d. If a facility pre-alerts the ambulance transport company, this allows better movement of appropriate resources and quicker response times, as well as better service of a patient's needs. This can happen as soon as a facility knows it will eventually need a transport. Sometimes the facilities do know this right away. This can happen as much as 20 to 45

minutes in advance, and can be done by anyone at the facility, including a receptionist. The AMR CON Holders have tried to educate their customers that this would help the speed of responses, and AMR will continue trying to foster this practice. *Id*., 2212:10-2216:8.

e. On any given day, the AMR CON Holders have 35–45 ALS ambulances equipped with both ventilators and IV pumps. *Id*., 2216:16-23; 2292:9-16.

f. Jaramillo initially met Dignity employee Matt Karger in February or March 2018; he perceived their communications as positive and cooperative. They met in the spring regarding west side facility issues. Jaramillo and other AMR employees went to the facility on multiple occasions, this included AMR supervisors. In general, when concerns are raised, Jaramillo asks for specifics, which is typical in the industry. *Id*., 2216:24-2218:17.

g. Dignity employee Linda Parsons initiated communications about a billing concern via a phone call in April 2018, following up with an email. They had two meetings about this at the Arizona Genera/Laveen campus. The concern was initially presented as when a facility might pay versus when a patient might pay, as well as the information that needs to be conveyed during the intake process in order to make a record that the call is appropriate for an ambulance transport. This developed because a patient had threatened to go to the media. *Id*., 2218:18-2222:25; AMR-43A through C; AMR-45.

h. One of these meetings occurred on April 26, 2018. At this meeting, Matt Karger stated that since AMR had entered the market, there had been great service to Dignity, that AMR's response times were good, and they appreciated the work AMR had done. Karger stated he was seeing response times come in under 30 minutes. Jaramillo contemporaneously documented this interaction in his meeting notes. *Id*., 2223:1-2224:21; AMR-76.

i. The billing concerns discussed at that April 26 meeting included justification of urgent versus non-urgent, the transports being declined as medically necessary such that there was no justification for the transport from the insurance coverage perspective. This was the result of Dignity facilities not giving AMR's dispatchers the necessary information that would then make its way into the ePCR. Dignity callers were just saying things like they needed a transport to a "higher level of care," which does not constitute insurance justification. There needed to be more specific reasons, including the medical condition. *Id*., 2224:22-2227:6. After this meeting, Jaramillo believed that all concerns had been resolved, that they had had a great meeting; he believed he had a positive relationship with Karger, that AMR was being collaborative with Dignity, that AMR had assisted with mutual understandings and that the Dignity folks were thankful. *Id*., 2227:15-2230:20; AMR-23 and 77.

j. In light of all of this, Jaramillo found Matt Karger's testimony surprising and contrary to their meetings and emails. *Id*., 2231:5-12.

k. Another example of positive encounters is a May 24, 2018 meeting held with Karger in order to educate Dignity staff on the difference between urgent and non-urgent transports, which included discussion of AMR's call intake sheet and encouragement of facility administrators to notify AMR about any extended ETAs or other concerns, especially in "real time," with as much information as possible so that AMR could look into the concern as quickly as possible. *Id*., 2231:13-2235:17; AMR-67.

l. Jaramillo participated in a June 20, 2018 meeting with Karger and a Dignity employee named Brenda Lopez about a problem with an AMR crew. This led to AMR educating the crew about better customer service. The meeting also included a compliment about services given to another patient. They discussed the disconnect between AMR dispatch and Dignity staff, such as Dignity staff simply saying they needed a Code 3 transport, that the matter was "urgent." That is not

enough to ensure the right medical equipment arrives and does not include the information necessary for future insurance reimbursement. The AMR representatives let the Dignity participants know that Dignity staffs' expectations were unfair, that AMR requires certain essential information for those reasons and in order to allow AMR to meet its obligations to DHS under its CON. *Id*., 2235:24-2241:13.

m. That June 20, 2018 meeting did have a different flavor than the earlier meetings. Alex Lopez had been told he was not allowed in the west side facility, the meeting was "a little more hostile;" from Jaramillo's perspective this is when things started to turn. Karger and his facilities became "a little bit more closed off" and not as receptive to conversations or to providing AMR with details, instead switching to making more frequent complaints without providing specific information about those complaints, which then required Lopez to have to dig for the specifics. *Id*., 2241:14-2243:1.

n. Jaramillo perceives that in April 2018 the good relationship between AMR and Dignity changed at the frontline, it was in June 2018 that he began to see it at the leadership level. *Id*., 2302:5-2304:4.

o. Overall, Jaramillo believes he has had a positive relationship with the Dignity organization, including working with the Phoenix Children facility (which Dignity owns 20% of), attending new hospital VIP receptions, etc. *Id*., 2247:9-2250:8.

p. AMR dispatchers do, on occasion, look to other providers if the AMR CON Holders are not able to provide appropriate and reasonable IFT responses. *Id*., 2250:9-2251:19.

q. When a call for an IFT comes into dispatch, at times it will become apparent that it is a 911 transport and the call is then turned to 911. That is how the system is supposed to work. *Id*., 2253:5-21.

r. Historically, Dignity has made valid complaints about crew behavior; the same thing happens with other hospitals such as Honor and Banner, and results in crew education. This would be normal for any EMS

system. Likewise, ambulance crews raise problems with hospital staff. None of this is an indication that the system is broken. If no complaints were ever made, that would indicate a problem. *Id*., 2253:22-2255:8.

s. An ambulance not showing up with the correct equipment can occur for a multitude of reasons including the correct information not being conveyed to dispatch, communications not being clear or misunderstood, equipment being broken . . . there are a lot of reasons but this occurs "few and far between" in the totality of all transports provided. These are bumps in the system that any ambulance transport company could experience, especially if the facility calling does not want to take the time to go into detail during the call intake process. *Id*., 2305:14-2308:4.

35. ***Other housekeeping/exhibits admissions*** were done after Jaramillo testified, as follows:

a. AMR-82 and 83, prior versions of ADHS-15 (Guidance Document), were admitted. AMR-82 is the original Guidance Document, effective December 15, 2010. AMR-83 is the March 1, 2015 revised version.

b. AMR-48A was submitted with an amendment to the title only, to clarify that the NW Maricopa County calls itemized there were for the period of July 1, 2016 through July 30, 2017.

36. ***John Valentine*** is an AMR Regional Director who primarily oversees 911 services throughout Arizona's rural communities and the Maricopa County central valley / west valley areas. RT, V9, beginning at 2315:5; 2356:2-11; AMR-1A. During his testimony, the following exhibits were admitted: AMR-1A, 37, 42, and 67. His testimony also established the following:

a. Mr. Valentine has been in the EMS business for approximately 30 years, primarily in Arizona, and is familiar with both all aspects of operations and all types of services, from the most remote rural settings to the Maricopa County urban setting, including his involvement in AMR's application for issuance of CON 136. *Id*., 2316:1-2316:25; AMR-1A.

b. In connection with seeking issuance of CON 136, Valentine and Glenn Kasprzyk met with various stakeholders (ambulance transport customers such as hospitals, freestanding ERs and nursing homes) and had a lot of dialogue around the Rural/Metro organization's very, very long convalescent / IFT arrival times (as much as 4 to 6 hours). They realized there was no mechanism to measure IFT arrivals under the CON rules, so the AMR team decided to put some teeth into DHS's ability to measure CON arrivals. This was discussed with DHS and the Bureau, because it was a brand new idea. At the time, they knew the concept would evolve and improve, which has already been seen with the change of the "at the bedside pickup" arrival requirement, which proved to be dependent upon too many factors beyond an ambulance company's control, such as hospital security, a hospital not having a patient ready upon arrival, etc. *Id*., 2316:22-2320:10.

c. After CON 136 (AMR Maricopa) was issued, the AMR organization struck a deal to acquire the Rural/Metro operation, which created a lot more work for local AMR employees. However, until the Director approved the transfer of the Rural/Metro entity held CONs to AMR, local AMR operations had to be "hands off" with the Rural/Metro affiliated CON holders. They could not make any changes to operations. This included PMT, all SW entities, ComTrans, and Rural/Metro CON 109. At the time, the Rural/Metro Corporation had just emerged from Bankruptcy, and "lived through a pretty brutal time" and "was a pretty broken organization." Lots of its equipment was in disarray, the company needed a complete facelift. All of the IFT ambulances, and some of the 911 ambulances, were in bad shape. Employees were concerned about their jobs. AMR had to rebuild company culture. *Id*., 2320:11-2323:1.

d. The poor condition of Rural/Metro had created IFT arrival and equipment issues; its customers were unhappy. The organization had put low emphasis on the IFT side of operations, including cycling high

mileage ambulances out of its 911 system into the IFT side, and having little equipment standardization. *Id*., 2323:2-2324:18.

e. Because of the poor state of the Rural/Metro organization's IFT services, its customers had adapted by using bad habits: if customers received a long ETA, they would elect to "push the easy button," simply calling 911. Valentine observed that the habit has continued into the present. For example, approximately one year ago, the Phoenix VA was consistently calling 911 for IFT service. AMR worked with Phoenix Fire and VA's leadership to identify the "easy button" approach as a systemic problem. Working cooperatively, now when a transport is coming out of a facility, the VA calls for IFT service, not 911. However, the practice is still seen elsewhere, including as recently as a month before the hearing (a facility given a 20 minute ETA said that was "not good enough" and called 911). AMR cannot stop a facility from electing to call 911. *Id*., 2324:19-2327:13.

f. Fixing the broken Rural/Metro system cost a great deal of money. AMR committed to putting 100 new ambulances into service, year one. Between April 2015 and July 2018, in the greater Maricopa County area, AMR spent more than $13 million on vehicles alone. It spent almost $1 million on communications equipment. It spent over $5 million on medical equipment. Altogether, its capital expenditures total over $26 million. *Id*., 2327:14-2330:8; AMR-42.

g. Integrating and shoring up the Rural/Metro affiliated CON holders to redevelop Maricopa County's 911 and IFT services also took a lot of time and is continuing. For example, AMR had to integrate two separate CAD systems that did not "talk" to each other, transitioning to one, which took through at least the end of 2016 / beginning of 2017, and is still a work in progress. *Id*., 2330:11-2331:23. Approximately 80% of the Rural/Metro organization's IFT fleet has been replaced with new vehicles. *Id*., 2331:24-2332:6.

h. Implementing the new IFT "arrival time" concept and IFT CON requirements was also a cultural challenge, but at the same time a breath of fresh air for IFT customers. Dispatch had to be trained, new data collection fields had to be developed. The IFT arrival commitment concept, made through CON regulation, benefited all IFT users in Maricopa County, regardless of service contracts. *Id*., 2232:7-2333:11.

i. Unfortunately, some IFT users saw the 30 and 60 minute (within ETA) arrival criteria for urgent / non-urgent as something of a new 911 system. Some users decided everything was urgent. For example, understaffed Urgent Care centers experiencing high stress situations with more critical patients simply wanted their patients moved FAST. The arrival time implementation did not have this "everything is urgent" attitude as its goal. The 911-style immediate response expectation was not intended. Instead, working with the Bureau, AMR had developed real criteria for what transports met the "within 30 minutes of agreed upon ETA" arrival standard. Further, a freestanding ER and a trauma center should be able to hold and care for patients long enough to allow arrivals within the established (by CON regulation) IFT parameters. It is unreasonable to think that an ambulance can drive all the way across the Phoenix area valley in 30 minutes, even under normal traffic conditions. *Id*., 2333:12-2336:2.

j. The AMR arrival time data is captured with ePCR records, using Mobile Data Terminals (in ambulances) and/or through radio transmissions when an ambulance arrives at its destination. AMR is also able to use a GPS tool in order to confirm vehicle locations. *Id*., 2336:3-2337:3; 2366:21-2367:24.

k. Branding an ambulance by putting someone's logo on the side is governed by the Bureau (placement and size), but logistically it is difficult to keep a branded ambulance within its brand's area. If this is strictly done, the closest ambulance to a call might not be able to respond, creating a de facto "silo" within the greater system. 911

contracts have limited geographic areas, and it is more achievable to brand ambulances for these. If a brand user is spread all over Maricopa County (such as Dignity), branding impedes the goal of getting the quickest ambulance resource to a call for transport; it can actually slow down responses and can also lead to questions from one hospital about the presence of another hospital's "branded" unit being present. Branding ambulances can also present maintenance issues; for example, one would need 15 to 16 branded ambulances to maintain a 12 ambulance system. It can also present issues if an ambulance is damaged in an accident and has to be quickly replaced with a new one. *Id*., 2337:4-2340:6.

l. Community Ambulance's proposition that the applied for CON would take the pressure off the Maricopa 911 system is wrong. Several 911 systems require particular equipment, so an IFT ambulance would not be able to go there. Nothing demonstrated Community Ambulance would be able to get to the county fringes in a timely fashion in order to help with 911 work there. *Id*., 2340:9-2341:4.

m. AMR is the primary 911 provider for unincorporated Maricopa County's rural and wilderness areas. With the new governmental entity CONs taking their service areas out of the system (areas the AMR organization used to cover) but then not covering the more remote surrounding or nearby areas, AMR has lost its ability to reach the remote areas from those governmental entity service areas, requiring it to travel further and "leap frog" the new CON service areas. *Id*., 2341:5-2342:14.

n. After the loss of the Scottsdale 911 contract, AMR was able to reposition some of the units previously used there; however, its ability to do that repositioning is finite. On the other hand, 911 contracts come and go back up for bid. This is normal. *Id*., 2342:15-2343:9.

o. The AMR CON Holders losing transport volume in the urban core of Maricopa County will impact the county fringes. IFT ambulances are

used to cover rural areas. Erosion of IFT transports will mean there will be less available ambulances to do this. Rural calls are lengthy, complicated, infrequent and usually pretty bad. *Id*., 2343:10-23.

p. The size of the AMR organization, including its presence in Maricopa County (which is based upon the volume of transports it does there), provides advantages to the greater Maricopa County community, to the State of Arizona, and beyond. For example, 2017 was a busy year for disaster responses. AMR's CON holder known as River Medical mobilized 5 to 6 ambulances for the Las Vegas Harvest Festival tragedy because it was closest. Life Line (CON 62) then sent ambulances to backup River Medical, and Maricopa County ambulances backed up Life Line (a domino effect). This is common to do with FEMA contracts (backfilling where resources are pulled from). AMR's strong presence (size and scope) allows it to flex its resources this way. In Maricopa County, there are approximately 160 ambulances on the road everyday (which will be reduced by about 12 with the loss of the Scottsdale contract). No other company in Arizona can mobilize the same number of ambulances that AMR can in such a short time. As the volume of AMR's local business decreases, so will the volume of resources available for disaster type assistance. For example, Phoenix Fire only has approximately 29 ambulances on the road each day. In Maricopa County, for large scale events, AMR is the only safety net. *Id*., 2343:24-2347:13; AMR-37.

q. AMR operations also assist other governmental entities outside of their service areas for things like wildfires, a helicopter rescue in a remote area, a large apartment complex fire. *Id*., 2347:14-2348:12; AMR-37.

r. AMR also provides national assistance. Examples are documented on AMR-37, which does not include recent hurricane assistance. AMR's Maricopa County operations sent almost 100 employees to the hurricanes occurring during the fall 2017. That is a struggle for local

operations, but is greatly needed in the communities those people were sent to. *Id*., 2348:13-2349:25.

s. AMR also provides mutual aid in Maricopa County. *Id*., 2350:12-18.

t. Valentine does not agree that the removal of RBR's projected 11,315 transports for year one is "no big deal." First, that number was a "bad guess." Further, RBR states that it hopes to grow. There are a finite number of transports in the system, which do fluctuate with things like seasonal variety, influenza, etc. In recent years, AMR is seeing the overall Maricopa County transport numbers flatten (no significant growth). Under some 911 contracts, it is even seeing transports decline. Valentine attributes this to more educated customers being willing to utilize other forms of transportation, freestanding ERs and UCs impacting what would have otherwise been 911 transports, and people paying greater attention to higher insurance deductibles. *Id*., 2351:16-2353:5.

u. The proposed RBR operation would also be one more extension of the government entity CON "silo" phenomena (entities taking chunks of business here and there). AMR's fixed costs will not go away. The loss of transports will drive up the cost of doing business. RBR adding five ambulances does not mean that AMR can remove five, as it still needs to maintain services across Maricopa County. Additionally, RBR is going to have to call other providers when it cannot get to urgent Dignity transports. Consequently, the AMR CON Holders will need to be staffed in order to meet all of their CON obligations, including IFT arrival times. With a thinner volume, that will be harder to do. The transport market cannot be continually chipped away at while the new CON holders expect the AMR CON Holders to be their backup, and the overall community expects AMR to be its safety net. A point will come when this cannot continue to be the case. *Id*., 2353:6-2355:1.

v. If RBR does get a CON, Valentine cannot see how they will be able to take care of Dignity's patients and also help out with any other mutual aid, disaster support, backup, etc. in Maricopa County. *Id*., 2360:11-20.

w. There is not currently any need for another provider in the Maricopa County rural 911 / IFT service areas, including Wickenburg. Those areas are already covered and the local CON holders can lean on the AMR organization's overall strength if they need to. The nature of urgent IFTs in rural areas is that most go by air transport, or are moved by ground from the scene of an "incident" (as opposed to being taken to a rural facility). *Id*., 2360:21-2362:9.

x. AMR-84 corresponds to Valentine's personal observations about ambulance transport numbers being static (not growing). Any post 2015 increase is nominal and a number of things can cause minor transport number dips or raises. *Id*., 2364:12-2365:6.

y. The purported loss of Honor Health transports to Maricopa Ambulance is currently speculative. *Id*., 2366:5-7.

z. Just because an IFT ambulance is pulled off to a 911 response does not necessarily mean that the original IFT ETA cannot be met or even done faster. Units closer to the transport might become available. *Id*., 2373:7-2374:2.

aa. The original parameters for arrival times as seen on the Dignity contract are modeled upon AMR CON 136's arrival time parameters. Since then, the CON arrival time language has changed due to the above mentioned evolution of how arrival is measured (noted in subparagraph b., above). *Id*., 2381:5-22.

bb. AMR Maricopa's initial staffing when CON 136 was first issued (5 ambulances and 40 employees) cannot be compared to the RBR operations model as AMR Maricopa had no projected business available. It initially expected to do zero transports. Valentine would not have expected to be able to cover more than 11,000 transports with those initial resources. *Id*., 2384:23-2386:16.

FINDINGS OF FACT: REBUTTAL EVIDENCE

37. ***Community Ambulance*** chose to offer no rebuttal evidence. *Id*., beginning at 2390:1.

ADDITIONAL EXHIBIT ADMISSIONS

38. ***Additional Exhibits admitted*** (beginning at RT, V9, 2390:2) were AMR-36A through I; MA-15; and CA-44, 45, 47, 49, 50, 52, 53, 55, 56, 58, 59, 61, 62, 64, 65, 67, 68, 70 and 71.

CONCLUSIONS OF LAW

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

B. The Applicant has the burden to prove, by a preponderance of the evidence, that its application for a CON should be granted. A.R.S. §41-1092.07(G)(1): A.A.C. R2-19-119.

C. A preponderance of the evidence is defined as follows:

> The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

Black's Law Dictionary (10th Ed. 2014), p. 1373.

D. The Director of the Arizona Department of Health Services ("ADHS") and the ADHS have jurisdiction over ground ambulance services, including this matter, under A.R.S. Title 36, Chapter 21.1, Article 2 [specifically, A.R.S. §§36-2233 and 36-2236(B)], and A.A.C. Title 9, Chapter 25, Articles 9 – 11.

E. Arizona's Legislature, through the enactment of the above noted CON statutes, has mandated a fully regulated ambulance industry. *See* also, Arizona Constitution, Article XXVII, §1, Regulation of ambulances; powers of legislature (empowering the Legislature).

F. ADHS through its Bureau of Emergency Medical Services and Trauma Systems ("BEMSTS"), carries out this regulation of ambulance services in Arizona, including the CON application process. *See*, A.R.S. §§36-2232 through -2246.

G. In addition to this statutory framework, pursuant to the Director's statutory authority [A.R.S. §36-2232(A)(4) and (7)], ADHS has adopted rules to regulate ambulances and ambulance services. *See*, A.A.C. R9-25-901 through – 1110.

H. Any person or entity that wants to operate an ambulance service in Arizona may do so only after being granted a CON by ADHS. A.R.S. §36-2233(A).

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

(i) that a CON applicant must apply for a CON on forms prescribed by the Director [A.R.S. §36-2233(A)]; and

(ii) that a CON applicant must demonstrate that public necessity requires the proposed service or any part of the service [A.R.S. §36-2233(B)(2)]; and

(iii) that a CON applicant must demonstrate that it is fit and proper to provide the service [A.R.S. §36-2233(B)(3)].

J. A.A.C. R9-25-902 outlines the application requirements for an initial CON. This includes specific identification of the applicant [R9-25-902(A)(1)(a)], and the applicant's plan to provide temporary service to its proposed service area for a limited time when the applicant might become unable to provide ground ambulance service to the proposed service area [R9-25-902(A)(2)(e)].

K. Here, Applicant RBR is a Nevada organized entity that subsequent to submission of its Application became authorized to do business as a foreign entity in Arizona. However, the RBR Operating Agreement (providing authority for and describing the allowed purposes of RBR) only authorizes it to conduct business in Nevada.

L. RBR presented no reasonable plan for temporary services for its proposed service area (all of Maricopa County) for those limited times it might be unable to provide

services to that area. Its only "plan" is apparently to look to the existing Maricopa County CON holders for "back up." Given the scope of authority requested (any and all non-emergency / 911 transports anywhere in Maricopa County) and RBR's articulated operations plan, its intended usage of back up agreements would likely exceed the infrequent back up agreement usage that the Bureau views R9-25-901(5) as allowing.

M. In order to find an applicant "fit and proper," the Director must determine that the applicant has the expertise, integrity, fiscal competence and resources to provide ambulance service in the proposed service area. A.R.S. §36-2201(21) and A.C.C. R9-25-901(21).

N. Here, RBR met / did not meet its burden of proving it is fit and proper to run an Arizona regulated ambulance transport business.

O. A CON "shall be for all or part of the service proposed by the applicant **as determined necessary by the director for public convenience and necessity**." A.R.S. §36-2233(C).

P. "Public necessity" means "***an identified population*** needs or requires all or part of the services of a ground ambulance service." A.A.C. R9-25-901(33)(emphasis added).

Q. Here, the Applicant's proof of Dignity Health's desire to utilize RBR's proposed services cannot, as a matter of law, in and of itself constitute proof that the Application's identified population (all of Maricopa County) needs or requires all or part of Applicant's proposed services.

R. To determine "public necessity" for an initial CON, the Director shall consider, among other factors, the population demographics within the proposed service area, the geographic distribution of healthcare institutions within and surrounding the service area, whether issuing a CON to more than one ambulance service within the same service area is in the public's best interest (based upon the existence of ground ambulance service to all or part of the service area, the availability of certificate holders in all or part of the service area, and the availability of emergency medical services ("EMS") in all or part of the service area), as well as other matters determined by the Director to be relevant. A.A.C. R9-25-903(A).

S. The Applicant failed to provide any meaningful information regarding the availability of EMS in its proposed service area beyond the existence of some of the current Maricopa County CON holders [R9-25-903(A)(4)(d)].

T. Likewise, the only healthcare institutions that the Applicant provided any meaningful information about were Dignity Health facilities, despite the requirement of R9-25-903(A)(3). Limiting this evidentiary submission to a single entity's system might be adequate if an applicant only requested authority to serve that single system (an issue not reached here, as that is not the nature of the Application). However, given the breath of RBR's proposed CON authority, its evidentiary focus was inadequate under the governing regulations.

U. Further, RBR's evidentiary submission relating to population demographics was not entirely meaningful or complete.

V. In order to decide whether to issue a CON for convalescent or interfacility transports to more than one ground ambulance service for the same service area or overlapping service areas, the Director also shall consider regulatory factors including the financial impact[14] on those CON holders whose service areas will be overlapped by the proposed CON, the need for additional convalescent or interfacility transports ("IFT"), and whether a CON holder in the subject service area has demonstrated substandard performance. R9-25-903(B)[15].

W. With regard to ambulance service regulation, in general, ADHS's Guidance Document (last reviewed/revised January 2017) - GD-099-PHS-EMS:Certificates of Necessity for Ambulance Service (ADHS-15) states that "the Statutes and Rules seek to ensure that ambulance services have the sufficient financial strength and volume of business to continue operations to provide Arizonans with reliable service. *Id*., p. 1.

X. Here, even the Applicant's financial witness acknowledged that allowing RBR a CON would indeed cause the existing providers to suffer a negative financial impact. All Intervenors offered proof of the same, including the negative impact of that financial loss on operations and services currently being provided to the public.

---

[14] Pursuant to A.A.C. R9-25-1106(C), the ambulance service rates established by the Director for CON holders are intended "to provide for a rate of return that is at least 7% of gross revenue . . . unless the certificate holder requests a lower rate of return."

[15] As mentioned in the introductory section, RBR withdrew its averment of substandard service.

Y. Applicant also failed to meet its burden of demonstrating a need for additional convalescent or IFT services.

Z. Certain other matters considered relevant by the Director are included in the ADHS Guidance Document (ADHS-15). There, the ADHS' interpretation of the CON regulations and statutes is stated:

> **Certificate of Necessity:** A common misconception is that the Statutes and Rules are ***solely*** designed to limit the number of ambulance services in Arizona. This is not the case, as portions of the State have multiple providers with overlapping service areas where more than one ambulance company is providing services. ***However, the Statutes and Rules do establish a requirement that anyone seeking to start an ambulance service . . . must be able to demonstrate that there is a public necessity for the proposed service and ensure that protections are in place for citizens living in rural areas.***

Id., p. 1 (emphasis added).

AA. The Guidance Document elaborates upon the public necessity determination and the requirements of A.A.C. R9-25-903 as follows:

> This Rule recognizes that 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, although the impact on the current provider(s) of service, and on the public in and near to the application area, are factors to be considered. ***The Department believes that the primary focus for the determination of public necessity is made with reference to analyzing the needs of the community***, the adequacy of the current services provided, maximizing the use of contemporary EMS protocols that have been demonstrated to save lives, and ensure cost controls.

Id., p. 2 (emphasis added).

BB. Further, the Director will use the information submitted in the CON application, information provided by the current service providers, and other matters that may be relevant to the determination of public necessity including the following:

- A plan for a robust, on-going benchmarking and performance improvement process that encompasses all components of the EMS system . . .;
- A plan to collect and submit electronic patient care reports consistent with BEMSTS guidelines;
- A plan to adopt clinical guidelines and operating procedures for time sensitive illnesses consistent with best practice guidelines . . .
- Evidence of regular attendance and participation in meetings of the regional and State EMS Councils;
- **A plan to ensure that ambulance service will be maintained and improved for rural communities and county islands**;
- **Assurance that the service model will be cost effective and not result in higher ambulance rates**;
- **Assessment of the impact of a successful application on individuals living within and in rural and wilderness areas adjacent to the service area requested and Applicant's plan to address that impact**;
- **Assessment of the financial and operational impact of a successful application on the ability of an existing CON holder to serve residents within and living in rural and wilderness areas adjacent to the CON service area requested**; and

- **A plan to ensure continued ambulance service in rural and wilderness areas should the current CON holder be unable to serve those areas**.

Id., at pp. 2 – 3 (emphasis added).

CC. Here, RBR's suggestion that it would voluntarily refrain from doing interfacility transports out of the Wickenburg Hospital and would otherwise allow those CON holders currently serving rural and wilderness areas in Maricopa County to continue doing what they have historically done, possibly providing "back up" if Dignity's needs and desires are first satisfied, (i) is insufficient to ensure protection will be in place and ambulance services will not only be maintained but will be improved for citizens living in rural areas and county islands in the event RBR receives a CON and captures the bulk of Dignity associated transports (which is both RBR and Dignity's articulated plan); (ii) is insufficient to establish any plan to address the impact of an order granting its requested CON upon individuals living within rural and wilderness areas in and/or adjacent to its proposed service area; and (iii) is also insufficient to establish a plan to ensure continued ambulance service in rural and wilderness areas in and/or adjacent to its proposed service area should any of the current CON holders be unable to continue serving those areas.

DD. Further, the Applicant failed to offer evidence establishing that its proposed service model would be cost effective and not result in higher ambulance rates, not only for its proposed operations, but with regard to the current rates and charges for the existing CON holders in Maricopa County. All evidence submitted on this issue instead indicated that issuance of an RBR CON is likely to put upward pressure on rates and charges.

EE. The Guidance Document also allows applications for IFT service authority to propose "Interfacility Arrival Times" and to then have those times measured by ADHS for compliance purposes. There, the Director has approved definitions for IFT arrival times. *Id*., p. 4. However, RBR did not apply for a CON containing IFT arrival commitments. Its witnesses were inconsistent on the issue of whether RBR would accept a CON with IFT arrival commitments. RBR, to the extent it did agree to accept these, failed to identify what arrival parameters it could comply with or would agree to.

FF. The Applicant here has not proposed a CON limited to service to Dignity Health owned facilities and/or patients; instead, the Applicant requests authority to provide

any IFT or convalescent transport anywhere in Maricopa County. Dignity Health's desire to utilize RBR's services, as a matter of law, cannot establish that the citizens inhabiting the service area RBR proposes to serve, and other individuals traveling through said service area, need or require all or part of RBR's proposed services. Because RBR provided no evidence calculated to establish that its proposed services would be in the best interests of the public making up its proposed service area, instead focusing purely upon the desires of the Dignity Health (Maricopa County) system, as a matter of law its evidentiary submissions were insufficient to meet its burden of proving "public necessity" for the CON it has applied for.

GG. All in all, the evidence presented, including the entire application package, was insufficient for Applicant to meet its burden of establishing public necessity. Applicant RBR has not proven that the Maricopa County population it has targeted would benefit were the requested CON authority allowed by the Director and ample evidence was presented by all three Intervenors that an order allowing issuance of the requested CON would likely be detrimental not only to rural and wilderness residents in and adjacent to Applicant's proposed service area, but also to the Maricopa County population as a whole (in terms of both existing rates and charges, and ambulance services) as well as to the operational abilities and financial well-being of the Intervenors.

RECOMMENDED DECISION

For these reasons, it is recommended that the Director issue an order denying RBR/Community Ambulance's Application for a CON.

INDEX TO WITNESSES' TESTIMONIES

Delores Kells	24
Brandon Hestand	28
Matt Karger	33
Robb Beery	39
Robert Richardson	41
Aaron Sams	48, 62
Mike Evans	49
David Argue, PhD.	54
Brian Rogers	56
Neal Thomas	60
Mark Nichols	62
Mickeul Bryan Gibson	66
Roy Ryals	68
Jim Roeder	71
Ed Armijo	75
Glenn Kasprzyk	79
Scott White	84
Richard Bartus	86
Doug Jones	88
Todd Jaramillo	93
John Valentine	97

DATED this 28th day of January, 2019.

SHORALL MCGOLDRICK BRINKMANN

/S/PAUL MCGOLDRICK
Paul McGoldrick
Attorneys for Intervenors-AMR CON Holders

FLETCHER STRUSE FICKBOHM & WAGNER, PLC

/S/RONNA FICKBOHM
Ronna L. Fickbohm
Attorneys for Intervenors-AMR CON Holders

Pursuant to Case Management Order No. 1, electronic filing and service of the foregoing through https://portal.azoah.com/oedf/, has been done this 28th day of January, 2019.

By: /S/ Linda Clark