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' CLOSING STATEMENT** (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 Closing Statement.

Contemporaneously, the AMR CON Holders have submitted their detailed (proposed) Findings of Fact and Conclusions of Law for this Office's consideration and possible use

(hereafter "AMR FOF"), providing a summary of the evidence presented during the hearing – with record citations - and applicable statutory and regulatory citations. This Closing Statement is intended to be based upon that submission, but will not duplicate all the records and legal citations provided there, and will also include an accompanying discussion of some ancillary evidentiary points raised during the hearing that this Office may or may not be concerned about. These parties do not intend to discuss the fit and proper aspect of this proceeding, although that element does remain the Applicant's burden of proof, regardless of any Intervenor's position. Instead, the main focus here will be on the public necessity aspect. Without meeting its burden of proof on the same, the Applicant's request for a CON must fail.

CLOSING

INTRODUCTION

The evidence presented during the hearing, as considered from the vantage of applicable law and DHS/Bureau interpretation of its own regulations, demonstrates that public necessity does not support this Application. RBR was required to prove that "there is a public necessity for the proposed service and [that it would] ensure that protections are in place for citizens living in rural areas." ADHS-15 (Guidance Document) at p. 1.[1] The applicable statutes and rules also "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*. To this end, the public necessity factors that the Director will consider include the Applicant's "plan to **ensure** that ambulance service will be maintained **and improved** for rural communities and county islands" as well as assuring the Department that its "service model will be cost effective and not result in higher ambulance rates; . . ." Id., p. 3 (emphasis added).[2]

---

[1] Citations to exhibits will correspond to the OAH designations: ABC-1, ADHS-1, etc.

[2] Evaluation of public necessity also includes assessment of the impact of a successful application on individuals living within and in rural and wilderness areas adjacent to the Applicant's proposed service area, as well as Applicant's plan to address that impact and the financial and operational impact on the ability of existing CON holders to continue serving those wilderness/rural residents. These requirements include RBR's "plan to ensure continued ambulance service in rural and wilderness areas should the current CON holder[s] be unable to serve those areas." *Id*., p. 3.

Here, RBR's Application and evidentiary presentations demonstrate little concern with this regulatory focus. Rather, as became crystal clear during the hearing, this Application is about Dignity Health wanting to expand its Maricopa County footprint, wanting to get revenue from the most collectible transports in the Maricopa County system, and wanting to be its own ambulance transport provider. Neither RBR nor its majority owner, Dignity, demonstrated any real concern about any other aspect of Maricopa County ambulances services, or the ambulances services provided to the public in the rural/wilderness areas adjacent to Maricopa County, including concern about the impact of RBR capturing the "silo" of all Dignity facilities / Dignity patient transports on the financial and operational strength of the existing Maricopa County CON holders. No evidence of any real RBR intention to maintain or improve ambulance transport services to rural or wilderness communities was presented. RBR's only rural/wilderness service plan is to "let" existing providers keep serving those areas.

RBR's last minute addition of "insufficient service" as a basis for public necessity was unsupported by competent and credible evidence. Despite suggestions of what might be called "better" services, the record does not support the notion that RBR would be able to provide "better" services than the existing providers can supply in Maricopa County (leaving aside the question of whether Arizona's regulatory focus would qualify an incrementally "better" service as a "public necessity" consideration). Further, even RBR's own witnesses acknowledged the fact that entry of RBR into the Maricopa County system would negatively impact the existing providers/ system as a whole. At the same time, and ironically, if this CON application is approved one of two things will occur: (1) Dignity will not get what it desires, and it will be unhappy with RBR's as-proposed operations, or (2) the negative impact to the overall system, including the existing CON holders and the public they serve, will be much greater than was discussed during the hearing, when the applied for CON is used as a Trojan horse.

RBR'S APPLICATION IS INTENDED BY DIGNITY TO EXPAND ITS MARICOPA COUNTY FOOTPRINT, OBTAIN REVENUE FROM THE MOST COLLECTIBLE TRANSPORTS IN THE SYSTEM AND PROVIDE AMBULANCE TRANSPORT SERVICES TO ITSELF; THE APPLICATION WAS UNSUPPORTED BY ANY CREDIBLE EVIDENCE OF, OR EVEN REAL STATEMENT OF CONCERN REGARDING, "PUBLIC NECESSITY" AS IT RELATES TO THE REMAINDER OF THE MARICOPA COUNTY PUBLIC

Despite RBR's application for authority to provide non-emergency (911) services to all of Maricopa County, the evidence presented during the hearing made it abundantly clear that

the sole focus of the requested RBR CON is upon Dignity, not the Maricopa County public at large. By Dignity's President Linda Hunt's "greater than 50%" definition, Dignity owns RBR. As her résumé states, Dignity has aggressively expanded its Maricopa County presence in recent years, including through the use of joint venture "partnerships." RBR's intended Arizona operations are obviously another step in that rapid expansion endeavor. Hunt's testimony (and the testimony of other RBR/Dignity witnesses) demonstrated it is Dignity's intent that this joint venture (RBR) will assist Dignity in keeping ambulance transported patients "in-house," that Dignity facilities' transportation desires are and will continue to be RBR's number one focus, that Dignity will profit from its majority ownership of RBR, and that Dignity is targeting the most collectible class of Maricopa County ambulance transports (interfacility transports – "IFT" - of patients with known health information – "PHI").

While it is not the AMR CON Holders' intent to reiterate all of the record citations given in the AMR FOF here, some examples are compelling. Hunt herself testified she would be concerned about the loss of "high quality" reimbursement work, as Dignity depends upon the same to balance out the lower reimbursement or non-compensated work it does. RT, 174:25-177:3. No such concern was demonstrated for the existing CON holders. As Robert Richardson's March 27, 2017 letter to the Bureau (ADHS-12-001) demonstrates, RBR/Dignity is well aware of the fact that the IFTs the Application targets are a better risk for reimbursement than emergency (911) work. In addition to that RBR letter's acknowledgment of this fact, a number of other witnesses testified to or acknowledged the same during the course of the hearing.

Hunt also agreed that there had been a big push by Dignity, since at least 2017, to keep its patients "in-house" when moving between facilities. RT, 163:20-24. Hunt and her "join venture person," Jeff O'Malley, plainly expect that if Dignity requires an ambulance transport, RBR will be the one responding. They also intend that RBR will do all billable Dignity transports. According to RBR's ARCR, the only ambulance responses it will be doing will be those that will be reimbursed; its pro forma ARCR projects no non-billable ambulance responses. ADHS-12-004, at line 5.

Jeff O'Malley defined "public necessity" as focusing upon Dignity's needs. RT, 319:7-24. He testified that RBR's primary obligation is going to be to Dignity, that RBR will "put the needs of Dignity Health first and foremost" even over RBR's financial needs. *Id.*, 383:7-

385:15. Hunt agreed that if a Dignity IFT transport is needed, and no RBR ambulances are then available, Dignity might hold the transport until RBR becomes available, assuming the patient is stable. *Id*., 171:6-172:20. She was unconcerned about the increase in infrastructure costs to the overall Maricopa County system or the public it serves as a result of an RBR CON. For example, see *id*., 172:21-173:12. Hunt was also unaware of any studies or analyses regarding the impact of RBR's CON on the public, other hospitals, or existing CON holders. *Id*., 165:23-166:8.

Although she obviously was the person best situated to have the discussion with other major hospital systems, Hunt did not even informally raise the issue of whether those other hospital systems perceive there is any "need" for an additional ambulance transport provider in Maricopa County and did not mention, during her professional meetings with the area's other major hospital systems, the fact that Dignity was looking to get into the ambulance business; she has no idea whether the area's other hospital systems would be supportive of the RBR CON Application. *Id*., 164:10-165:22.

Another example of Dignity only caring about Dignity, not the system as a whole, is the Dignity employee complaint, when seeing an ambulance across the street from their rehabilitation facility, that AMR's dispatch would not allocate that ambulance to them, without knowing whether or not the ambulance might have already been designated by dispatch for a more urgent usage (the Dignity staff did not want to bother to follow established protocols for allocation of the appropriate resource to the appropriate transport). *See*, Brandon Hestand's testimony regarding CA-233R; RT, 586:11-588:15.

Robert Richardson, one of RBR's principals, agreed with Jeff O'Malley: Dignity "is the need." *Id*., 847:18-848:4. During its first year of operations, RBR has projected it will only do transports for Dignity facilities. *Id*., 836:14-19. Brian Rogers agrees with Richardson: RBR will be "laser focused" on Dignity. *Id*., 1344:24-1345:4.

Another example was seen during Daisy Mountain Fire Chief Nichols' testimony. Mark Burdick, of EMS Advisors, told him that RBR's CON was going to be used in order to do Dignity IFTs only, and the service area would be all Dignity facilities. *Id*., 1447:5-1448:19. Apparently, no mention of any other CON usage was provided.

Additionally, no evidence was presented regarding any genuine RBR intention to utilize its CON for any transports outside of Maricopa County's urban and populated suburban core.

In addition to taking the more collectible category of transports (IFTs with known PHI), this concentration on the urban / suburban core, while leaving the fringe areas to other providers, is another form of "cream skimming." *See*, testimony of Roy Ryles, RT, 1822:11-1823:25.

These are just examples; the record was replete with testimony and exhibits demonstrating that the RBR/Dignity Application is really only about Dignity's desire to own an ambulance transport company and to do all transports for its facilities and its patients. This desire of Dignity's is supplemented by the likely misplaced notion that an RBR CON will result in "faster" ambulance arrival times at Dignity facilities.

RBR PRESENTED NO COMPETENT EVIDENCE OF ANY REAL PLAN TO ENSURE AMBULANCE SERVICES WILL BE MAINTAINED AND IMPROVED FOR RURAL COMMUNITIES AND COUNTY ISLANDS; ALL THE EVIDENCE WAS TO THE CONTRARY

Despite ample notice of ADHS/the Bureau's focus on both maintaining and improving ambulance transport services for individuals in rural and wilderness communities, RBR failed to present any competent evidence in this regard. Starting with Linda Hunt's testimony, it is apparent that Dignity's Maricopa County focus is primarily urban or populated suburban related. There are no Dignity facilities west of the 303, south of Queen Creek Road, north of just off the 101/Aqua Fria Freeway or east of Scottsdale Road (in the area north of McDowell Road) or Bush Hwy (south of McDowell). *See*, CA-183; *see* also, RT, 101:12-13; 103:17-22.

RBR's plan, as articulated by Robert Richardson, for maintaining services in the rural northwest fringes of Maricopa County would be to "let" AMR take any IFT transports out of the Wickenburg hospital (*id*., 844:14-15), and with regard to the rural northeast portion of Maricopa County, or anything else considered rural, RBR would "let" the agencies currently running the 911/emergency transports take any IFTs in those areas. *Id*., 870:8-871:6. It was apparent from his testimony that RBR would only be concerned with backing up a rural area if it involved a Dignity patient. For example, see *id*., 900:21-901:16. Richardson did claim to want to help underserved areas (*id*., 1177:19-1178:19); however, no such areas were identified by Richardson or any other RBR witness during its case-in-chief, and no testimony was offered to explain how RBR would have the resources to provide that sort of help and also fulfill Dignity's desires.

Brian Rogers' plan is basically an "if it's not broke, don't fix it" theory that does not consider the operational impact to the overall Maricopa County system of an RBR CON. *Id*., 1316:23-1317:12. He simply intends to leave the rural areas alone. *Id*.

This Office and the Director need look no further than the conclusion of RBR's case-in-chief (stopping at RT, 1377:17, when RBR rested). RBR failed to meet the important rural/wilderness services considerations set forth in the Notice of Hearing and in DHS's Guidance Document. It has no rural/wilderness maintenance or improvement plan. Beyond RBR's case-in-chief failure to establish this important aspect of the public necessity inquiry, the evidence subsequently submitted by Intervenors, regarding the anticipated negative impact to the rural fringes of Maricopa County, was uncontroverted.

RBR'S LAST MINUTE ADDITION OF "INSUFFICIENT SERVICE" AS A BASIS FOR PROVING PUBLIC NECESSITY WAS ALSO NOT SUPPORTED BY ITS CASE-IN-CHIEF

As is set forth in more detail in the AMR CON Holders' Prehearing Memo (incorporated by this reference herein), RBR's CON Application was submitted based upon Dignity's **desire** to have RBR be its ambulance transport provider. The Application, including the follow-up exchange of information / dialogue with the Bureau prior to issuance of the Notice of Hearing, failed to ever reference any notion that existing ambulance transport service in Maricopa County is substandard, insufficient, or inadequate. That status remained as such until RBR's initial exhibit and witness listing, in April 2018. By then, Dignity had sued the AMR CON Holders, and ample time had passed during which RBR might have notified the Bureau/ADHS of any change in circumstances supporting its Application. However, even that April 2018 "disclosure" of "substandard service" (through mention in RBR's witness listing) was perfunctory. *See*, AMR CON Holder's Prehearing Memo, beginning at p. 7. It was not until the (theoretically) ***final*** witness and exhibit disclosure deadline (September 18, 2018) that RBR removed "substandard service" as a topic of witness testimony, replacing it with an equally perfunctory "insufficient service." *Id*., pp. 7-14. The timing of that contention, in and of itself, should speak volumes to this Office and the Department.

Beyond the timing of the contention, and the obvious implications to be drawn from the same, RBR did not present competent and credible evidence supporting any allegation that there are "insufficient" ambulance transport services in Maricopa County. Rather, the overall

picture presented is one demonstrating that the concerns Linda Hunt claimed led to the Application, of significant ambulance transport delays in 2014 and early 2015 – brought to her attention by others within the Dignity system as contributing to facility "bottleneck" and "throughput" issues, occurred during the time that the Rural/Metro organization had emerged from Bankruptcy and was in very poor condition, at a time prior to any of the intervening parties entering the Maricopa County market and embarking upon IFT service to the Dignity system, and at a time prior to the AMR organization receiving authority from DHS to manage, operate and control the Rural/Metro affiliated CON holders (something not occurring until the end of January 2016).

Hunt summoned her joint venture person – Jeff O'Malley, and demanded a "quick" ambulance transport solution. O'Malley was already aware of the RBR operation / Dignity joint venture in Nevada. He promptly focused upon that as the "solution" Hunt demanded. The RBR train was plainly rolling into Arizona well before any of the current privately held CON holders in Maricopa County (the intervening parties) had embarked upon IFT service to the Dignity system. Hunt appeared to be unaware of that relevant chronology.

To shore up the "public necessity" factor in light of (as Maricopa Ambulance has characterized it) a very young and newly developing ambulance transport system in Maricopa County, RBR did offer general statements of overall delayed IFT arrivals (without offering the specifics that would allow the intervening parties to look into the same, possibly providing explanations or contradictory evidence), and a handful of isolated incidents of delayed IFT arrivals, unprofessional crew conduct, and communication breakdowns. None of this rose to the level of anything close to a systemic problem. No evidence established that the delayed IFT arrivals would have fallen outside the 90% compliance "fudge factor" (as counsel called it) found in both CON IFT arrival compliance requirements and Dignity's separate contracts with the AMR CON Holders, Maricopa Ambulance and RBR itself. As at least one witness testified, it would be impossible for any ambulance transport provider to meet the CON / contract arrival compliance requirements 100% of the time (which testimony was uncontradicted).

Hunt's concern about timeliness is, for example, if there is a discharge at 10:00 a.m. and the patient is still there 4 to 5 hours later. RT, 161:13-19. She had no idea the number of times this has happened due to no available ambulance transports, any time from 2015

through 2018. *Id*., 161:20-162:6. She also stated that CA-17 (the RBR – Dignity contract) is what will be used if RBR gets a CON. *Id*., 87:2-24. The arrival parameters there are the same as those in the AMR – Dignity contract (CA-24). *Id*., 89:21-90:9; CA-17 and 24. Those parameters are what Dignity wants. *Id*., 90:11-19.

Jeff O'Malley provided no direct information about any unreasonable IFT arrival times or ETA delays. He testified that he asked Dignity staff to accumulate data on ambulance transport arrivals, and they gave him nothing useful. He plainly misunderstood the arrival criteria that the AMR CON Holders were functioning under, whether because of their CON regulation or the Dignity – AMR contract. He also misunderstood how "urgent" is defined as opposed to "non-urgent." His testimony provided no credible evidence of systemic problems with existing ambulance services.

Ms. Kells (an RN) also misunderstood arrival criteria and urgent versus non-urgent definitions. She believes that physicians define urgent, as opposed to the need for a facility to follow DHS criteria - which look to the submission of clinical determinations the physicians make (something also important to ensuring the patient will have the opportunity to seek insurance reimbursement). A physician saying "this is urgent, get an ambulance here right now" is simply not good enough, regardless of whether one is looking at arrival compliance under CON regulation (for example, *see* AMR-4E-003), the AMR–Dignity contract (CA-24 at p. 9), the RBR – Dignity contract (CA-17 at pp. 10-11) or DHS regulation interpretation through the Guidance Document (ADHS-15-0004).

Kells also exhibited the same misunderstanding as Jeff O'Malley has regarding arrival being required within 30 minutes of a call being placed (then applying that misunderstanding to every single transport ever being done for any of the three urgent care centers she oversees). As John Valentine testified, AMR's innovation of IFT arrival compliance was never intended to establish a new 911-type system, where users would pick up the phone, and an ambulance would **immediately** be dispatched. Kells also gave absolutely no consideration to the 90% compliance standard (annually under CON or per quarter under the Dignity contracts), including the fact that there will always be outlier responses (IFT arrivals).

It is true that RBR offered limited evidence of isolated incidents of unprofessional AMR CON Holders' crew behavior, of dispatch errors, and of communication problems and/or delayed arrivals. However, no evidence was submitted to show that the identified delayed

arrivals would have been outside of the 90% compliance requirement, and the other employee mistakes, etc. are the function of using human employees, something one would expect in any system this large. This "human error" aspect was acknowledged by RBR and Dignity's own witnesses. Even the greater Dignity organization has made mistakes when it comes to patient billing (resulting in a Corporate Integrity Agreement with the federal government). Its employees break rules and policies, get disciplined, need more training, and receive customer complaints – some of which are justified. This does not mean that Dignity is providing inappropriate services to its patients. RT, 83:16-84:8; 147:14-148:22.

NO COMPETENT EVIDENCE WAS SUBMITTED BY RBR TO DEMONSTRATE IT WOULD BE ABLE TO PROVIDE "BETTER" OR "FASTER" AMBULANCE TRANSPORT SERVICES THAN EXISTING CON HOLDERS IN MARICOPA COUNTY; AND REGULATORY PRINCIPLES DO NOT NECESSARILY DEFINE "BETTER" OR "FASTER" AS A BASIS FOR "PUBLIC NECESSITY"

No possible interpretation of the statutes, regulations, or DHS/Bureau interpretation of the Department's own regulations (the Guidance Document), as set forth in the AMR CON Holders' Proposed Conclusions of Law, involves an examination of whether a proposed CON holder **might** simply be able to provide incrementally "better" equipment, arrival times, employee culture, etc. than existing providers. First, any analysis of proposed operations must include the Bureau's concern with whether what is proposed will cause an upward pressure on rates and charges. For example, were a CON applicant to propose that it would park an ambulance at every single Dignity facility in Maricopa County, in order to ensure that at least for the first call for an ambulance transport that facility would have an "immediate" response, the Bureau would obviously want to look at that business model to see what its implication would be to overall system rates and charges. Thus, even though that type of staffing might be "better" for Dignity, it would not necessarily meet the Bureau/Department's definition of a factor supporting "public necessity."

Here, RBR/Dignity suggested that RBR would be "better" because RBR would adhere to Dignity's ethics / code of conduct, because the initial ambulances RBR puts into the system would all be equipped with IV pumps and vents, because RBR will arrive for all Dignity IFTs within 30 minutes of a call for a transport being placed, and because RBR hopes to accomplish electronic integration between its patient records and Dignity's records.

With regard to the last of these items (integration of electronic records), the evidence was undisputed that RBR has not even contemplated trying to accomplish that type of integration with Dignity in Nevada (despite being in business there for quite a few years), that the AMR CON Holders are already transmitting their ePCR records documenting patient care to Dignity facilities, that Dignity can already view these ePCR records and compare them to its own Electronic Medical Records, that there is apparently no one in Arizona doing this type of record integration (RBR did not offer any examples of anyone doing this integration anywhere, and acknowledged the difficulty in accomplishing such integration), and that if this was something that was able to be accomplished with RBR, there is no reason it could not be accomplished with the existing CON holders, assuming what is required and the associated cost / implication to rates and charges would be approved by the Bureau. Further, RBR's pro forma ARCR did not include any costs allocated to this "integration." That fact alone is telling.

There was also no evidence presented demonstrating that RBR would be able to arrive in response to Dignity calls for IFTs "faster" than the existing Maricopa County CON holders can. The only real evidence (as opposed to speculation or uninformed opinion) submitted in support of RBR's arrival capability were the maps done by Mr. Beery, all of which depend upon RBR having a fully staffed ambulance present and ready to go at each of its four substations (which does not take into consideration certain time intervals, such of out-of-shute time). With an operations plan involving only four full-time ambulances, and one 12 hour ambulance (that AMR's expert, Doug Jones, testified will be inefficiently placed), it is obvious that RBR will not always have four ready-to-go ambulances at each of those four substations. The notion that RBR might be able to respond to all Dignity calls for transports within 30 minutes of receiving a call was unproven by RBR, and was acknowledged by at least Mr. Rogers as unrealistic. In fact, not only did no evidence support the notion that RBR's arrivals will be "faster," the competent and credible evidence was to the contrary. If Dignity in fact intends to rely exclusively, or almost exclusively, upon RBR, it is most likely that the arrivals its facilities experience will be slower than what it has been experiencing in the last couple of years.

With regard to the proposition that RBR's equipment will be "better", the undisputed evidence is that AMR staffs 35 – 45 ALS IFT units per day that have the same equipment. No one from RBR testified that if it is required to add ambulances to the 6 identified in its pro

forma ARCR, in order to service Dignity transports, it will be financially able to similarly equip those additional vehicles. No testimony was offered of incidents where patient care or safety were compromised due to a lack of equipment. Isolated incidents involving a delayed (ETA) arrival or an air transport (which could have been required solely due to traffic conditions), do not establish any sort of "public necessity" for every single IFT ALS unit in Maricopa County being equipped the same as what RBR proposes for its first six units. Were that the case, the Bureau would obviously be requiring the same. The Bureau would also be legitimately concerned with possible implications to rates and charges were such a new equipment requirement for **all** ambulances proposed.

With regard to all of these items, as well as company culture / code of conduct / humankindness philosophy, etc., no competent evidence established RBR as being uniquely situated: several RBR witnesses acknowledged that were any of these "differences" required by Dignity, and acceptable to the Bureau, there is no reason that other local providers already holding CONs could not agree to do the same.

DIGNITY'S FAILURE TO COLLECT ITS OWN DATA TO SUPPORT ITS JOINT VENTURE'S APPICATION CANNOT BE DEEMED A FAILURE THAT EXISTING CON HOLDERS ARE RESPONSIBLE FOR

Repeatedly throughout the hearing, RBR was heard to complain that it did not have certain "data" because existing CON holders would not give the data to it. Setting aside inquiries into whether any data requests made by RBR to the existing CON holders were for reasonable / relevant / non-proprietary / and non-HIPAA protected information,[3] it is RBR that bears the burden of proof in this proceeding. The evidence established that Dignity's Arizona operations are financially secure and strong. Dignity is a non-profit entity that in Arizona, in fiscal 2017, had approximately $2.1 billion in revenue, and a combined EBITDA of

[3] This topic has been fully briefed in the AMR CON Holders' Objection to and Motion to Quash RBR's Subpoenas Duces Tecum, which is incorporated herein by this reference. Additionally, unlike communications that apparently ensued with the other intervening parties herein, RBR made no real good faith effort to try to modify its absolutely unreasonable SDT requests with the AMR CON Holders. For example, in the brief discussions undersigned counsel did have with RBR's counsel, RBR was only willing to dial back to 2013 (well before AMR had any Maricopa County presence) its demand for comprehensive CAD data about every single (911 and non-911) ambulance transport the AMR CON Holders (which includes the legacy Rural/Metro CON holders) had **ever** done .

approximately $94 million. CA-135, p. 1. Dignity uses Electronic Medical Records (EMR). As Mr. Hestand testified, the ePCR data that ambulance transport providers use to document their transport of Dignity patients is available to Dignity, and can be compared to Dignity's EMRs. RT, 550:11-17.

Additionally, Dignity's own policies require it to collect data regarding ambulance transports, including for insurance reimbursement purposes. Jeff O'Malley told Dignity employees (apparently several years before the hearing) that they should be collecting data about when ambulances were called for, and when they arrived (presumably including information regarding patients' medical conditions so that it could be discerned whether the call was urgent or non-urgent). However, he admitted that his request was not complied with.

Ms. Kells also asked her staff to create EMS logs. Linda Hunt understood those logs were being created, but what was generated was incomplete, missing information, and really of little use. The justification seems to be that it is too time consuming / burdensome for Dignity to collect and analyze its own data, that its own employees do not want to take the time to record the information that it wants. Instead, it would rather obtain proprietary information, or have the existing CON holders be the ones to have their employees take the time and money to accumulate and produce data. One need simply look at the combined ARCR financial reportings of the existing CON holders (AMR-54, p. 6) to see what entities are in the best position to devote financial resources to assisting RBR with its application: it is Dignity, not the AMR CON Holders.

Dignity already has the AMR CON Holders' ePCR information for all Dignity patient transports. It apparently did not ask its IT department to set up its own records in a way that information regarding ambulance transports can be collected and analyzed, including comparison to the ePCR data. Obviously, doing that would take time and money, such as the time and money that AMR devoted to quickly mobilize its employees in order to revise its ePCR data platform in order to ensure it could collect and report opioid overdose information to DHS after the Governor directed DHS to report this. RT, 1995:1-22. RBR did not present any competent evidence demonstrating it or Dignity even attempted to look at the information Dignity already has in its EMR (including the ePCR data) in order to see if it would give Jeff O'Malley what he wanted. That was RBR / Dignity's choice. Jeff O'Malley's "data" complaints should ring hollow.

Further, RBR should not be heard to complain that the AMR CON Holders were required by contract to provide the breath of information that RBR/Dignity apparently wanted at the time of hearing. First, that is not what the contract states (CA-24 at p. 11). Second, when the contract was amended in February 2017, no complaints were raised with AMR regarding the data it had been providing thus far and no amendments were made to the contract to better specify what data it was that Dignity required. For example, see RT, 2002:4-2003:8; CA-25. The "we need more and better data from AMR" complaint was plainly related to the impending RBR CON hearing, as opposed to any real requirement under the contract. For example, O'Malley continued to ask AMR for information beyond the scope of that required by the contract even after Dignity had filed suit against AMR. *See*, RT, 241:3-7.

IT IS POSSIBLE THAT THE RBR APPLICATION IS A "TROJAN HORSE"

Given the testimony elicited during hearing, and the exhibits, it is apparent that if RBR receives a CON one of two things will happen: (1) RBR will fail to provide that which Dignity expects, and RBR's ambulance transports will arrive under slower arrival times than the existing CON holders are able to provide; or (2) RBR's Application is a Trojan horse. If it is the latter, the Bureau's evaluation of RBR's ARCR is meaningless, as RBR truly intends to do a much greater body of transports than what the ARCR is built upon. Likewise, the negative impact – both operational and financial – that will be visited upon the AMR CON Holders and the public they serve will be much greater than that which was calculated based upon RBR's minimally disclosed operations. Either scenario does not support public necessity.

Because the RBR Application is Dignity driven, it is very likely that if this CON Application is granted, RBR will quickly put into service a far greater number of ambulances than its ARCR states, taking a far greater number of transports than it testified its year one operations are intended to capture. Why "likely"? Both the RBR witnesses and the Dignity witnesses plainly contemplate RBR will do all of Dignity's transports. That number is far in excess of the 11,315 transports the RBR ARCR is based upon. Growth beyond even the "Dignity affiliated" transport number (in excess of 18,000) is already coming. Dignity's Arizona President is proud of her rapid expansion of Dignity's Maricopa County footprint. In fact, she trumpets that "aggressive" growth as her first listed "major accomplishment" in Arizona. CA-135, pp. 1 and 2. Mr. Davis testified how RBR started out very small in Nevada, initially doing only "convenience" transports, and then grew as it continued to look for opportunities,

including transports for non-Dignity operations. For example, *see*, RT, 43:20-45. Like Hunt, he is proud of the fact of Dignity expanding its Nevada presence under his leadership. CA-172. Linda Hunt is aware of Davis's Las Vegas RBR model. *Id*., RT, 74:24-75:8. She testified there are additional Dignity facilities for Maricopa County "in the works," some that were disclosed and obviously some that have not yet been made public. *Id*., 76:10-24.

O'Malley also testified that he expects RBR's year one ARCR volume to grow. *Id*., 357:17-19. Richardson testified that RBR started in Nevada with 3 ambulances and 18-19 employees. After only 5 or 6 months, it started doing more transports throughout the community. Today, it does BLS/ALS transports of all types, both 911 and IFT. *Id*., 758:13-764:1. Currently, it has 33 ambulances and runs 95-100 transports per day. *Id*., 934:8-14. Richardson vehemently resisted the notion that RBR's CON authority could be limited to Dignity patients and facilities, even though he acknowledged he could craft a definition of "Dignity patients." For example, *see, id*., 807:19-808:14; 843:13-24. He stated that in year one they will serve as much of the Dignity transports as they can handle, maybe expanding their operations. *Id*., 1176:9-1177:2. Brian Rogers testified that when RBR entered the 911 market in 2016, it increased its volume approximately 400 times. He also hopes to grow the Arizona CON company operations. *Id*., 1279:22-1281:4; 1365:11-1367:3.

Dignity not only has an appetite for expansion, it has the money to amp up RBR's ambulance operations as much as RBR can get work. The potential implications to the overall Maricopa County system are devastating.

OTHER MISCELLANEOUS / ANCILLARY ISSUES

The following ancillary/miscellaneous issues may also be of import to this Office and the Director:

1. *RBR appears to have failed to call as witnesses the individuals having the most information about its application/operations plan: EMS Advisors.*

Repeatedly during the hearing, witnesses testified that it was the EMS Advisors Group (including Jim Hayden, Mark Burdick, and Charlie Smith) who had the information, completed the initial draft of the Application, had the ARCR information, etc. For example, Jeff O'Malley demonstrated a very poor understanding of the Dignity system's IFT needs, because he is in charge of joint ventures and has no clinical or ambulance transport focus. He was remarkably

underinformed about the facts relating to the "public necessity" aspect of this hearing, but appears to have been offered to support the same. He offered no concrete testimony or experience establishing himself as a witness competent to testify regarding matters such as his notion of "dedicated" ambulance units being better for patient care. He also testified that EMS Advisors prepared the initial draft of the application. RT, 317:5-11.

Further examples include EMS Advisors giving Mr. Beery the Maricopa County hospital information and nursing facility information he then testified to (i*d*., 710:9-711:9); EMS Advisors were identified as the entity that would be checking with the Bureau about facts supporting the Application and they were the ones who knew how the ARCR's 11,315 transports were calculated, they were the ones that would be able to compare that number with the overall body of transports in Maricopa County (*id*., 910:21-912:25); and they also did the salary calculations and the average pay studies necessary for the ARCR (*id*., 959:24-960:24*;* 963:4-8).

Mr. Richardson had no information regarding unique aspects of Arizona operations. For example, see testimony beginning at RT, 732:15 and CA-125; *see* also, *id*., 853:16-19 (Richardson not understanding that non-ambulance transfers in Arizona are not included in CON authority); and *id*., 871:7-13 (Richardson having no idea what facilities might be east of the 101 and generate IFTs). EMS Advisors was his authorized agent for the Application. ADHS-1-0002. EMS Advisors were helping with his understanding of Arizona regulatory requirements. Id., 1188:17-1189:1. He had Mark Burdick meet with different fire departments about the Application. *Id*., 803:15-24. Burdick and EMS Advisors obtained the letters of support. I*d*., 807:1-16. The failure to call EMS Advisors to testify regarding the letters of support deprived the intervening parties of the ability to ask what information they provided in order to get the letters.[4] EMS Advisors was also identified as the source of the concept that ambulance transport growth tracks population growth. *Id*., 976:12-17. The only evidence elicited during hearing on this topic was to the contrary.

[4] For example, Daisy Mountain's Fire Chief, Mark Nichols, testified that Mark Burdick / EMS Advisors led him to believe the Application was just for IFT service to Dignity facilities, none of which exist in the Daisy Mountain service area, so he agreed to sign the letter. RT, 1447:5-1448:19.

Brian Rogers also deferred to EMS Advisors when asked about matters unique to Maricopa County, such as rush hour traffic patterns (*id*., 1333:23-1334:23; 1339:11-13) and local paramedic wages (*id*., 1340:18-1341:9).

2. *No evidence established ambulance transports in Maricopa County as the primary or even a significant cause of "throughput" or "bottlenecking".*

Linda Hunt testified that "throughput" and "bottlenecking" concerns, which were related to her as being caused by ambulance transport delays, are what initially led her to direct Jeff O'Malley to seek an ambulance transport solution. However, no credible evidence provided by RBR established that these types of issues are primarily or even significantly caused by a lack of reasonable ambulance transport availability. Plus, no testimony established that adding another provider to the system would increase available resources. Rather, Rod Davis's testimony related the "similar" Nevada experience (as Hunt noted) as being caused by hospital construction growth not keeping up with population growth. Several RBR witnesses acknowledged that the bulk of people leaving hospitals (including emergency rooms) do not leave by ambulance. Certainly, ambulance transports are one of the many factors that must be considered when analyzing "throughput" and "bottlenecking," including the negative impact of these phenomena upon ambulance transport providers when their units get "hung up" at understaffed hospitals waiting to offload patients. Glenn Kasprzyk testified these are seasonal problems, and are something the AMR CON Holders want to address with hospital leadership, but his efforts in this regard have been frustrated. Once the seasonal congestion dies down, everyone seems to lose interest. This testimony was uncontroverted. "Bottlenecking" and "throughput" cannot serve as legitimate bases for "public necessity" in this proceeding.

3. *The AMR CON Holders losing certain 911 contracts or possibly losing certain IFT contracts is also irrelevant to the "public necessity" analysis.*

RBR seemed to place great emphasis upon the fact that the AMR CON Holders have recently lost a 911 contract (Scottsdale) to Maricopa Ambulance, and may be losing another 911 contract as well as a preferred provider contract with a different hospital system. However, as Doug Jones testified, loss of a 911 contract is an entirely different situation than

losing a defined body of transports flowing out of a healthcare system spread widely over Maricopa County. The 911 geography is small and contained. The CON holder gets "geographic relief" from its CON responsibilities when a 911 contract is lost. And 911 contracts come and go. All of these contracts will come back up for bid eventually, and the AMR CON Holders expect to win them back. As one witness testified, in the ambulance business "you win some and you lose some." That is entirely different than RBR and Dignity, through the RBR joint venture, developing a business plan that essentially will involve the removal of all Dignity ambulance transports from the Maricopa County system, which is a number that will continue to grow as Dignity continues to expand its footprint. These transports will be "lost" to the entire system, they are not something that will be put back up for "bid." At the same time, the AMR CON Holders will continue to have CON responsibility for the entire Maricopa County geography. Even RBR's witness, Mike Evans, acknowledged that the removal of those transports from the system will in fact cause a negative financial impact to the current CON holders.

4. *David Argue's testimony does not establish public necessity.*

Plainly, RBR's Application is not one that is based upon a desire to "compete" for Dignity's business with other CON holders in Maricopa County. Dignity has a financial incentive to "hold" its transports for RBR, as it will receive a portion of RBR's profits, and will be better situated to ensure the patients being transported stay "in system." No credible evidence established that RBR will be competing in any way with any of the Intervenors. Certainly, Mr. Argue was willing to try and craft his testimony to get around this obvious fact, given the significant amounts of money he was receiving for his testimony. However, this Office should not give that testimony any weight.

5. *RBR did not prove it could duplicate the specialized services ABC is able to provide.*

No credible evidence submitted by RBR demonstrated that it could provide the specialized behavioral health expertise that Intervenor ABC has in the event that ABC fails or

withdraws from the Maricopa County market because of financial considerations. This could cause harm to the overall system, and is certainly not in the public's best interest.

6. *RBR's plan for "temporary services" is inconsistent with DHS regulation.*

Aaron Sams testified that backup agreements are supposed to be for infrequent overflow/temporary services during limited times when an existing provider has no ambulances available, they are not supposed to be a regular plan of service. RT, 1568:2-23, citing R9-25-901(5). However, RBR's plan for coverage during those times that it has no ambulances available to provide the services that its CON will not just authorize, but require it to provide, is that it will look to the existing CON holders. Plainly, RBR's operations plan (according to its pro forma ARCR) will not allow it to consistently provide the services it seeks certification for, and it will on a regular basis be required to look to backup. This is contrary to DHS's regulations.

7. *Little weight should be given to Matthew Karger's testimony.*

Matt Karger's testimony regarding Dignity having problems with the AMR CON Holders' billing practices ended up as contrary to DHS/the Bureau's position on that billing concern. Karger was wrong. He also misunderstood how the Bureau looks at IFT arrival times, including the distinction between urgent and non-urgent and how the two are calculated under the AMR – Dignity contract (as well as the Dignity - Maricopa Ambulance contract and the proposed RBR – Dignity contract). His expectation that an ambulance will be "immediately" dispatched upon a call for a transport being placed, and will then arrive within 30 minutes, is contrary to Bureau regulation, contrary to all Dignity contracts disclosed and was shown to be unrealistic. The fact that he was misinformed / mistaken is not surprising given how inexperienced he is with regard to ambulance transports and billing. Hopefully, as he matures into his position, and once the instant proceeding is closed, he will have a better perspective.

CONCLUSION

If RBR's Application is accepted at face value, it is a Dignity owned joint venture that wants to build a silo around Dignity's facilities and patients, cherry picking the Maricopa County system transports that are considered more desirable, in that they are centrally located (away from the County's outer fringes) and more collectible than, for example, 911/emergency responses. Dignity will have a financial incentive to hold those transports it considers economically desirable for times when RBR's ambulances will be available to do them. Neither Dignity nor RBR demonstrated any real concern with the impact of RBR's proposed operations on the existing CON holders, the 911 system, the greater Maricopa County population, or rural/wilderness communities in and adjacent to Maricopa County. Allowing RBR/Dignity to so proceed would be opening a Pandora's box. Why would all of the County's major hospital systems not want to follow suit?

The AMR CON Holders have to care about the whole Maricopa County system, not just a discrete user subset. The AMR CON Holders are also the safety net for Maricopa County. The RBR/Dignity type of silo mentality has already negatively impacted the Maricopa County system, and is inconsistent with the quality CON coverage that DHS has worked so hard to ensure for all Arizona residents.

Despite attempting to proceed based upon an "insufficient services" theory, RBR produced no credible evidence of systemic problems existing subsequent to the AMR CON Holders entering the Maricopa County market, spending significant amounts of money to shore up services in Maricopa County, and embarking upon providing IFT services to Dignity. The "insufficient services" theory also appears to be based upon fundamental misunderstandings or unrealistic expectations about how transports are classified as urgent versus non-urgent and about IFT arrival requirements, whether under CON authority or various contracts with Dignity. IFT arrival times were never intended to create a new 911 system, where a facility could call and always expect an immediate dispatch of an ambulance.

IFT arrival regulation / contract commitments were never intended to allow physicians or staff at medical facilities to simply dictate to a dispatcher, without providing the necessary clinical information, that a transport is "urgent" and requires an "immediate" response. The AMR CON Holders created a triage chart to effectuate ADHS regulatory oversight, a chart dispatch and facilities can use in order to gather the clinical information (as determined by the

appropriate medical personnel at the facility with the patient), which information is then used (including application of Bureau guidelines) to distinguish between urgent and non-urgent, to document the medical records so that insurance coverage can be better obtained by the patient, and in order to ensure that the right resources are used for the IFT response. These parameters and guidelines have apparently been misunderstood, but that misunderstanding cannot serve as a basis for "public necessity."

For all these reasons, as well as the facts and law detailed in the AMR FOF, this Office should recommend to the Director that RBR's Application be denied as unsupported by public necessity.

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