

Hofmeyr Law PLLC  
31 N. 6<sup>th</sup> Avenue  
Suite 105-466  
Tucson, Arizona 85701  
TELEPHONE 520.477.9035

Adriane J. Hofmeyr - State Bar No. 025100  
[adriane@hofmeyrlaw.com](mailto:adriane@hofmeyrlaw.com)  
*Attorney for ABC Ambulance, LLC*

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**

<p>In the Matter of:</p>  <p><b>RBR Management LLC, dba Community Ambulance</b></p> <p>Applicant.</p>	<p>Docket No. 2017-EMS-0104-DHS (EMS No. 0283)</p> <p><b>ABC AMBULANCE'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW, and ORDER</b></p> <p>(Assigned: The Hon. Tammy L. Eigenheer)</p>
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Pursuant to Case Management Order No. 7, Intervenor ABC Ambulance LLC, current holder of CON No. 139 (“ABC”), through undersigned counsel, hereby submits its Proposed Findings of Fact and Conclusions of Law, and Order in the above-captioned matter. For the reasons set forth in ABC’s Written Closing Statement submitted simultaneously herewith, ABC respectively requests that these proposed Findings of Fact and Conclusions of Law be adopted, and that Applicant’s application for a certificate of necessity be denied.

**PROPOSED FINDINGS OF FACT**

A. **BACKGROUND**

1. Applicant is a limited liability corporation registered in Nevada and is owned 50.1% by Dignity Health (“Dignity”) and 49.9% by Ambulance Management Group, LLC

1 (“AMG”). ADHS 1-0093.

2 2. AMG is 50% owned by Applicant’s Chief Executive Officer, Mr. Rob  
3 Richardson, and 50% by Applicant’s Chief Operations Officer, Mr. Brian Rogers.

4 3. On June 10, 2016, RBR Management LLC dba Community Ambulance  
5 (“Applicant” or “RBR”) submitted to the Arizona Department of Health Services (“ADHS”  
6 or “the Department”) Bureau of Emergency Medical Services and Trauma Systems  
7 (“BEMSTS”) an application for an initial Certificate of Necessity (“CON”) to provide  
8 interfacility and convalescent ambulance services in Maricopa County (“Initial  
9 Application”). Exhibit ADHS 1.  
10

11 4. Applicant’s proposed service area is Maricopa County. Exhibit ADHS 1-  
12 0064.  
13

14 5. Attached to the Initial Application was Applicant’s projected Annual Cost  
15 and Revenue Report (“ARCRs”). Exhibit ADHS 1-0068 to 1-0092.  
16

17 6. Applicant anticipates performing 11,315 transports in year one of operations.  
18 Exhibit ADHS 1-0069.

19 7. In its Initial Application, Applicant anticipated 90,520 Loaded Billable Miles.  
20 Exhibit ADHS 1-0069.  
21

22 8. The make and year of each ground ambulance vehicle that Applicant proposes  
23 to use was listed in the Initial Application. Exhibit ADHS 1-0088.

24 9. On March 27, 2017, Applicant submitted to the Department an amended  
25 ARCR (“Amended Application”). Exhibit ADHS 12.  
26

27 10. In its Amended Application, Applicant requested that it join the Phoenix  
28

1 Uniform Rate Group as its proposed rates for service. Exhibit ADHS 12-0001.

2 11. In its Amended Application, Applicant increased its Loaded Billable Miles to  
3 177,646. Exhibit ADHS 1-0004.

4 12. In its Amended Application, Applicant updated its list of ground ambulance  
5 vehicles that Applicant proposes to use. Exhibit ADHS 12-0023.

6  
7 13. In the cover letter of the Amended Application, Applicant indicated that the  
8 list of ambulances included in its amended ARCRs was still not an accurate list of the  
9 vehicles it proposes to use. Exhibit ADHS 12-0001.

10  
11 14. Applicant's proposed hours of operation are 24 hours a day, 7 days a week,  
12 52 weeks a year.

13 15. Applicant wishes to provide interfacility ground ambulance ("IFT") services.

14 16. Applicant has requested the Department to grant it a CON to perform  
15 convalescent transports. Tr. Vol. 3, p. 809:10-11. However, Applicant does not propose to  
16 do any such transports, but rather plans to call "other entities" to perform convalescent  
17 transports. Tr. Vol. 3, p. 854:8-10

18  
19 17. Neither the Initial Application nor the Amended Application proposed that  
20 interfacility arrival time standards be included in Applicant's CON. Tr. Vol. 5, p. 1178:25,  
21 p. 1179:1-3.

22  
23 18. Applicant has not submitted any further amendments to its Application.

24 19. The service area proposed in Applicant's application would overlap with  
25 service areas currently served by **CON 139**, issued to ABC; **CON No. 147**, issued to  
26 Maricopa Ambulance, LLC ("Maricopa Ambulance"); **CON No. 75**, issued to American  
27

1 Ambulance; **CON No. 46**, issued to ComTrans Ambulance Service, Inc.; **CON No. 71**  
2 issued to Professional Medical Transport, Inc.; **CON No. 109** issued to Rural/Metro  
3 Corporation (Maricopa); **CON No. 86** issued to Southwest Ambulance Maricopa; **CON**  
4 **No. 66** issued to Southwest Ambulance and Rescue of Arizona; **CON No. 58**, issued to  
5 Canyon State Ambulance; **CON No. 136** issued to American Medical Response of  
6 Maricopa; **CON No. 62** issued to Life Line Ambulance Service (the last nine CON  
7 holders are referred to as the “AMR CON Holders”) (collectively, “Intervenors”).

8  
9 20. All of the CON holders in paragraph 19 above petitioned to intervene in  
10 these proceedings and were granted intervenor status.

11  
12 21. The service area proposed in Applicant's application would also overlap or  
13 abut with the service areas currently served by **CON No. 8** issued to Buckeye Valley  
14 Volunteer Rescue Unit; **CON No. 114** issued to North County Fire and Medical District;  
15 **CON No. 121** issued to Black Canyon Fire Department; **CON No. 105** issued to Daisy  
16 Mountain Fire District (“Daisy Mountain”); **CON No. 78** issued to Gila Bend Rescue  
17 Ambulance; **CON No. 140** issued to Mesa Fire and Medical; **CON No. 76** issued to City  
18 of Phoenix ETS; **CON No. 143** issued to Rio Verde Fire District; **CON No. 12** issued to  
19 Sun Lakes Fire District; and **CON No. 141** issued to Surprise Fire and Medical. Exhibit  
20 ADHS 1-0064.

21  
22  
23 22. All the CON holders listed above, included Intervenors, have been found  
24 fit and proper to hold CONs in Arizona.

25  
26 23. On June 1, 2017, the Department issued a Notice of Hearing, beginning on  
27 June 26, 2017 at the Office of Administrative Hearings in Phoenix, Arizona. By  
28

1 agreement, the parties agreed to continue the hearing, which was scheduled to begin on  
2 October 22, 2018.

3 24. Hearing sessions were held at the Arizona Office of Administrative  
4 Hearings, before the Honorable Tammy L. Eigenheer, on October 22 through October  
5 26, 2018; and November 5, 2018 through November 8, 2018. During the nine hearing  
6 days, Applicant and the Intervenors offered exhibits and presented the testimony of  
7 witnesses. The Department called one witnesses, and cross-examined witnesses called  
8 by Applicant and by the Intervenors.  
9

10  
11 **B. TESTIMONY AT THE HEARING**

12 25. The Application is “unique,” because “it will specifically focus on one  
13 healthcare system,” namely, Dignity Health. Tr. Vol. 6, p. 1157:24-25, 1158:1-8.

14 26. To deal with Dignity Health’s “capacity issues” (Tr. Vol. 1, p. 26:5), and  
15 alleviate “conditions of overcrowding” at Dignity’s Nevada facilities (Tr. Vol. 1, p. 23:6,  
16 p. 27:11, p. 30:13), and “throughput issues” (Tr. Vol. 1, p. 48:6-12), Dignity Health  
17 formed and became the majority owner (50.1%) in RBR Management LLC (Applicant) in  
18 2010 (Tr. Vol. 1, p. 31:18-19). This allowed Dignity to “offload or transfer” patients  
19 between Dignity hospitals in Nevada. Tr. Vol. 1, p. 26:12.  
20

21  
22 27. As Dignity Health grew in Arizona, patient transfers between Dignity  
23 facilities became “more and more of an issue” by the “end of 2014 ... early part of 2015.”  
24 Tr. Vol. 1, p. 69:14-18.

25  
26 28. Dignity’s CEO in Arizona, Ms. Linda Hunt, testified that “we have a  
27 shortage of beds in this community ... so the sooner we can transfer patients, the more we  
28 can get people out of the ER or out of the outlying areas ... into a bed.” Tr. Vol. 1, p.

1 193:19-24.

2 29. Ms. Hunt testified that Dignity has a financial incentive to move patients:  
3 Dignity is “held accountable” to a “geometric mean length of stay” “because that’s how  
4 we’re paid. So if you go over, it’s on your nickel.” Tr. Vol. 1, p. 185:8-18. “They don’t  
5 reimburse you for that time, that extended -- so it was very obvious that we needed to do  
6 something.” Tr. Vol. 1, p. 186:21-23.

7  
8 30. Ms. Hunt testified that Dignity did no “assessment into broader public need  
9 for interfacility transports in Maricopa County,” and that its assessment “only related to  
10 Dignity’s needs.” Tr. Vol. 1, p. 135:5-9.

11  
12 31. Ms. Hunt testified that there has been a “big push to keep Dignity’s patients  
13 in-house” (Tr. Vol. 1, p. 163:20-24), and that Dignity’s “practice is to keep our patients  
14 in-house” (Tr. Vol. 2, p. 531:19).

15  
16 32. Ms. Hunt testified that Dignity’s expectation is that “this ambulance service  
17 will focus on Dignity-controlled facilities.” Tr. Vol. 1, p. 180:12-15.

18 33. Ms. Hunt testified that, if Applicant is granted a CON, Dignity’s expectation  
19 is that Applicant “would serve the needs of those controlled Dignity facilities.” Tr. Vol. 1,  
20 p. 182:22-25, p. 183:1.

21  
22 34. Dignity’s Jeff O’Malley testified that Dignity did not look at any of the  
23 ARCRs of the existing providers in Maricopa County on the Department’s website  
24 because “I don’t know that the financial position of another organization or the total  
25 transports that another organization is doing -- how that could be relevant to the Dignity  
26 Hospital transport needs.” Tr. Vol. 2, p. 353:7-10.  
27  
28

1           35.     Mr. O'Malley testified that Dignity's focus is "solely on Dignity" and "what  
2 Dignity and our – our partners" need. Tr. Vol. 2, p. 353:11-14.

3           36.     Mr. O'Malley testified that Dignity is "unaware of any needs outside of  
4 Dignity that [Applicant] may have analyzed." Tr. Vol. 2, p. 387:21-25.

5           37.     Mr. O'Malley testified that he is the Dignity representative that sits on  
6 Applicant's Board of Managers. Tr. Vol. 1, p. 199:7-9.

7           38.     Mr. O'Malley testified that what Dignity wants in an ambulance service is  
8 "ownership by Dignity, oversight by Dignity, fiduciary relationship with Dignity." Tr.  
9 Vol. 2, p. 430:13, p. 431:9-13. Mr. O'Malley testified that Dignity's needs could not be  
10 met by "any independent, non-owned" ambulance company in Arizona. Tr. Vol. 2, p.  
11 431:14-19.

12           39.     When asked what would Dignity expect Applicant to do if called by a non-  
13 Dignity facility for a transport, Mr. O'Malley testified that this could be done but "not at  
14 the expense of a Dignity Health level of performance that we've agreed to." Tr. Vol. 2, p.  
15 436:19-25, p. 437:1-3. Mr. O'Malley testified that "we need to make sure we're not  
16 compromising the commitment we made to Dignity Health." Tr. Vol. 2, p. 437:7-8.

17           40.     Mr. O'Malley testified that neither Dignity nor Applicant did a "needs  
18 assessment" prior to filing the Application because "I am the primary customer. I know  
19 exactly -- ... I know what our needs are. ... I'm the voice of the customer. It is my needs  
20 that I can share very clearly with you." Tr. Vol. 2, p. 437:22-24, p. 438:3-10.

21           41.     Applicant's CEO, Mr. Rob Richardson, testified that Applicant did not "do a  
22 needs assessment for the purposes of analyzing the need for ground ambulance transports  
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1 in Maricopa County” because [Mr. O’Malley on behalf of Dignity Health] is the need.  
2 He’s the patient – he’s the customer that’s providing that need.” Tr. Vol. 3, p. 847:18-25,  
3 p. 848:1-6.

4 42. Mr. Richardson testified that the testimony shows that “the only identified  
5 population assessed by [Applicant] or by Dignity, its majority owner, is that the identified  
6 population is Dignity and Dignity’s patients.” Tr. Vol. 4, p. 16-25.

8 43. Mr. Richardson testified to nothing on the issue of public necessity. Tr. Vol.  
9 5, p. 1167:20-22. He stated that the Dignity witnesses were testifying “to their need.” Tr.  
10 Vol. 5, p. 1167:18.

12 44. When pressed for Applicant’s plan to service non-Dignity-related facilities,  
13 Mr. Richardson testified that “we would put the emphasis and everything to take care of  
14 [Dignity Health],” and that, if another facility calls, Applicant “would look at it” and “we  
15 would entertain” being a “back up.” Tr. Vol. 5, p. 1175:1-17.

17 45. When pressed further by the Department for Applicant’s plan to serve the  
18 population covered by its proposed service area, Mr. Richardson testified that “our  
19 emphasis would be our client Dignity Hospital” (Tr. Vol. 5, p. 1176:1), and “our emphasis  
20 and our focus would be on our client that we have, is Dignity Health” (Tr. Vol. 5, p. 1177:1-  
21 2), while stating that “we would help assist anybody in the – Maricopa County for assistance  
22 if they needed transport services.” Tr. Vol. 5, p. 1176:2-4.

24 46. When asked about Applicant’s plan to address rural communities and  
25 county islands, Mr. Richardson testified that Applicant would “let” current CON holders  
26 continue to serve those communities as long as they performed at Applicant’s expectation  
27  
28



1 for service level. Tr. Vol. 3, p. 838:10, Tr. Vol. 5, p. 1180:16-25, p. 1181:1-2. When  
2 asked what “your plan is,” Mr. Richardson answered “Anything that’s in a declared rural  
3 area, the current CON holder would get all those calls, that they would keep doing what  
4 they are doing.” Tr. Vol. 5, p. 1181:13-21. Applicant’s response was the same response  
5 for the remaining bullet points in the Guidance Document. Tr. Vol. 5, p. 1183:23, p.  
6 1184:1, p. 1184:3.

8 47. Applicant provided no evidence of a plan for Applicant to serve the rural  
9 communities in its requested service area.

11 48. Mr. O’Malley testified that “I also believe that there is evolving models of  
12 health care that have not been contemplated by current CON laws ... and I think we need  
13 to be prepared to evolve our ambulance transportation system to meet those needs (Tr.  
14 Vol. 2, p. 369:17-21), and “I’m looking for somebody to innovate and help us evolve the  
15 ambulance system.” Tr. Vol. 2, p. 370:20-21.

17 49. Applicant and Dignity want a “platform” to integrate their electronic  
18 medical records. Tr. Vol. 2, p. 344:8-13, p. 346:3-5. “The call will be automatically  
19 matched to a medical record number to a dispatch number.” Tr. Vol. 3, p. 819:19.

21 50. Applicant believes that its bad debt “will come in lower” than other  
22 providers, because “the clients are known to us with better PHI than a 911 transport.”  
23 ADHS 12-0001.

24 51. At the time of a transport request, before deciding whether to accept a  
25 transport, Applicant will know whether a patient is a high or low risk for payment.

27 52. Knowing a patient’s protected health information (“PHI”) could dictate  
28

1 whether Applicant accepts the transports or passes it on to another provider.

2 53. Industry expert of 50 years, Mr. Roy Ryals, testified that “if they [Dignity]  
3 chose to use the presence or absence of a guaranteed payer or the presence or absence of  
4 an insurance or some other demographic – if they chose to use that as a tool in triaging the  
5 less desirable reimbursement patients to other providers, they certainly would have the  
6 capability to do that.” Tr. Vol. 7, p. 1821:17-22.

8 54. The current CON holders, including Intervenors, do not have access to the  
9 PHI of Dignity patients at the time of a call.

10 55. Applicant’s expert, Dr. David Argue, defined “cream skimming” as “when  
11 you have a competing entity that comes in and serves only the highly profitable patients or  
12 provides only a highly profitable service.” Tr. Vol. 5, p. 1226:9-11.

14 56. Mr. Roy Ryals testified that knowing a patient’s PHI before a dispatch fits  
15 within at least two common definitions of cream skimming. Tr. Vol. 7, p. 1822:3-25, p.  
16 1823:1-25. Mr. Ryals testified that one common definition of cream skimming is “you  
17 take the high efficiency in terms of revenue-producing calls and run those calls and not  
18 accept or respond or take low-efficiency revenue-producing calls, most commonly  
19 referred to as a 911 call.” Tr. Vol. 7, p. 1822:18-22. He testified that a second definition of  
20 cream skimming is “[t]he second form of cream skimming is a geographic cream  
21 skimming. And the geographic cream skim is where a provider comes in and staffs an  
22 deploys to take – to center of high efficiency, in terms of an operational standpoint,  
23 transports out of a much larger area, leaving the peripheral areas that are farther from the  
24 high-efficiency center to other providers to do those calls.” Tr. Vol. 7, p. 1823:4-11.

1           57.     Mr. Ryals testified that “At least from the testimony I’ve heard and the  
2 business plan is that what’s proposed is sort of a combination of the two [definitions of  
3 cream skimming ] – is taking high-efficiency revenue-producing calls out of the system  
4 without the risk of having to do the low-efficiency revenue-producing calls and at the  
5 same time is concentrating on the core of Maricopa County and ... the peripheral areas  
6 they’re going to leave to the other providers.” Tr. Vol. 7, p. 1823:11-19.

8           58.     Mr. Ryals testified that “an ambulance service that is taking the high-  
9 efficiency reimbursement calls out of the system” “leaves a disproportionate number of  
10 the less attractive calls to the existing providers.” Tr. Vol. 7, p. 1822:24-25, p. 1823:1-3

12          59.     Mr. Ryals testified that, where providers “have no background, you have no  
13 information on those patients, ... there’s significantly higher bad debt.” Tr. Vol. 7, p.  
14 1822:22-24.

16          60.     Mr. Ryals testified that, within an accountable care organization like  
17 Dignity’s Arizona Care Network, because every patient within that network is an insured  
18 patient (Tr. Vol. 7, p. 1824:15-17), “[Dignity] would have a hundred percent assurance of  
19 pay for those transports.” Tr. Vol. 7, p. 1826:1-2. Mr. Ryals testified that this reduces the  
20 number of insured patients for the other ambulance providers, to the extent they were  
21 previously taking those calls. Tr. Vol. 7, p. 1826:3-8. Mr. Ryals testified that this could  
22 lead to a higher bad debt to the other providers as a relative percentage of their gross  
23 revenue. Tr. Vol. 7, p. 1826:9-12.

26          61.     Mr. O’Malley testified that, in justifying its preference for Applicant to be  
27 its service provider, Dignity has “oversight and control and influence and ability to  
28

1 develop and direct policy, procedure. And transparency.” Tr. Vol. 2, p. 289:20-23. Mr.  
2 O’Malley testified that “It’s that – that organizational control” that makes this more  
3 attractive to Dignity than working with a company “that Dignity Health doesn’t have an  
4 ownership interest in.” Tr. Vol. 2, p. 289:11-14, p. 290:11.

5  
6 62. Mr. O’Malley testified that Dignity’s expectation is that Applicant will  
7 “commit to providing those services [to Dignity]” and “it’s going to be independent of the  
8 volume of services.” Tr. Vol. 2, p. 308:23-25.

9  
10 63. Applicant’s COO, Mr. Brian Rogers, testified that “Dignity is going to do  
11 what’s best for Dignity.” Tr. Vol. 5, p. 1376:20-21.

12 64. In 2012, in Nevada, a civil lawsuit was filed against Applicant and Dignity  
13 by two former Dignity employees, who charged that they were forced to transfer patients  
14 from one Dignity hospital to another “so its owners and their boss could profit – at the  
15 expense of patient safety.” Exhibit ABC 2, Tr. Vol. 1, p. 64:17. According to a newspaper  
16 article about the lawsuit, a then-co-owner of AMG “pushed hard in emails to ER doctors  
17 to promote patient shuttling and authorized bonuses to doctors who transferred the most  
18 patients to other” Dignity facilities. *Id*, Exhibit ABC 2-0001. Some payment was made to  
19 settle this lawsuit in January 2016: “Dr. Payoffs” is referenced in Exhibit ABC 82-0014,  
20 Tr. Vol. 2, p. 394:9; and Applicant’s CEO, Mr. Richardson, testified that “They got their  
21 settlement payments in January of ’16.” Tr. Vol. 3, p. 773:11-12.

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24 65. Dignity is a \$2.1 billion a year company. Tr. Vol. 1, p. 118:25-119:1.

25  
26 66. Dignity’s internal policies oblige its employees to track ambulance transport  
27 information. Exhibit ABC 30, Tr. Vol. 2, p. 417:18.

1           67.       Dignity would like Applicant to perform 11,315 IFT transports in year one.  
2 Dignity and Applicant extrapolated this number from data provided by AMR, based on  
3 the fourth quarter of 2015, for transports done between a subset of facilities that is  
4 considerably smaller than the number of facilities that Dignity hopes Applicant will  
5 service as part of this Application. Tr. Vol. 2, p. 443:2.  
6

7           68.       Mr. O'Malley testified that "all of the patients in Dignity facilities or in any  
8 Dignity hospital are being transported to and from wherever they're going by existing  
9 CON holders." Tr. Vol. 2, p. 326:7-12.  
10

11           69.       Dignity transports are currently being performed by the current CON  
12 holders in a manner that meets all of the regulatory requirements. Vol. 2, p. 326:22.

13           70.       Mr. O'Malley testified that there are no Dignity-affiliated facilities outside  
14 of the service areas of intervenors AMR, Maricopa Ambulance, and ABC Ambulance. Tr.  
15 Vol. 2, p. 350:16-25, p. 351:1.  
16

17           71.       Mr. O'Malley testified that "the intervenors present in the room have  
18 expressed the ability to add more ambulances, if needed." Tr. Vol. 2, p. 325:18-22.

19           72.       Mr. O'Malley testified that Dignity does not have information regarding  
20 whether non-intervening CON holders have additional capacity to serve the public in  
21 Maricopa County. Tr. Vol. 2, p. 326:3-6.  
22

23           73.       There are at least nine other CON holders that offer IFT and convalescent  
24 transport services in parts of Maricopa County that overlap the Applicant's service area  
25 request. Tr. Vol. 6, p. 1597:2.  
26

27           74.       ABC's CEO, Mr. Neal Thomas, testified that, in a telephone conversation  
28

1 he had with Dignity's Mr. O'Malley on September 22, 2016, Mr. O'Malley made no  
2 reference to any dissatisfaction with the current providers, or to any complaints that the  
3 current providers could not meet Dignity's needs. Exhibit ABC 7, Tr. Vol. 6, p. 1412:15,  
4 p. 1414:8-9.

5  
6 75. Mr. Thomas testified that Mr. O'Malley advised him that Dignity would  
7 only "be willing to discuss" ambulance transport services with ABC "if they were not able  
8 to get their license." Exhibit ABC 7, Tr. Vol. 6, p. 1412:15, p. 1414:1-2.

9  
10 76. ABC holds CON No. 139, which authorizes it to perform IFT and  
11 convalescent transport services in Maricopa County. Tr. Vol. 6, p. 1392:17-22.

12 77. ABC is currently entitled to a maximum of 20 ambulances (with an  
13 additional two ambulances per year going forward) and currently operates 14. Tr. Vol. 6,  
14 p. 1417:13-14.

15  
16 78. Applicant proposes to have 5 ambulances in operation (with one spare) to  
17 meet the needs of Dignity Health, with a proposed 11,315 transports in the first year. Tr.  
18 Vol. 4, p. 872:17-18, Tr. Vol. 3, p. 836:16.

19  
20 79. Mr. Thomas testified that, if Dignity were to approach ABC to do a similar  
21 transport load, ABC has the personnel and equipment to ramp up its operations to fulfill  
22 some or all of Dignity's transports, although his "preference would not be to try to take all  
23 of their transports. I would rather work with the existing providers. I think that it's in the  
24 patients' best interest that the providers are as efficient as possible so they have as many  
25 resources in certain areas so they can have the best and most appropriate response times."  
26 Tr. Vol. 6, p. 1417:9-25, p. 1418:1.  
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1           80.       About 48 percent of ABC’s transports are currently considered behavioral  
2 health transports. Tr. Vol. 6, p. 1396:19-22.

3           81.       When Dignity first issued a Request for Information for transport services in  
4 Maricopa County on or about April 13, 2015 (Tr. Vol. 6, p. 1407:15-17), ABC had not yet  
5 received its CON, but Mr. Thomas did advise Dignity’s Mr. O’Malley that ABC was  
6 about to get its CON. Tr. Vol. 6, p. 1409:1-5.

7           82.       On or about January 14, 2016, Mr. Thomas emailed Mr. O’Malley offering  
8 ABC’s services to Dignity Health; Mr. O’Malley never responded. Tr. Vol. 6, p. 1410:12-  
9 23.

10           83.       In January 2016, Dignity and Applicant contracted with EMS Advisors to  
11 begin the process of filing their own application for a CON. Tr. Vol.3, p. 800:10.

12           84.       Mr. Thomas testified that, on September 22, 2016, he telephoned Mr.  
13 O’Malley, who advised him Dignity “had a very strong partnership with a company in Las  
14 Vegas” and the plan was to “provide services to all Dignity Health facilities and then to  
15 Dignity partners ...” Tr. Vol. 6, p. 1413:4-10. Mr. Thomas advised Mr. O’Malley that  
16 Dignity’s volume “fit squarely within our wheelhouse and with our capacity,” but Dignity  
17 advised that they would only be willing to talk to ABC “if they were not able to get their  
18 license.” Tr. Vol. 6, p. 1413:20-21, p. 1414:1-2.

19           85.       Mr. Thomas testified that, on March 1, 2017, a meeting was held between  
20 himself, Mr. O’Malley, Mr. Richardson and a representative of EMS Advisors. Tr. Vol. 6,  
21 p. 1415:16-24. The substance of the meeting was to request ABC to provide backup  
22 services to Applicant if Applicant was granted a CON. Tr. Vol. 6, p. 1416:2-6. However,  
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1 Dignity's offer came with a condition that Mr. Thomas considered unlawful: in return for  
2 Dignity's transports, ABC would need to withdraw its intervention in these proceedings.  
3 Tr. Vol. 6, p. 1416:7-13. Mr. Thomas declined. Tr. Vol. 6, p. 1416:15.

4 86. ABC's current arrival times are superior to the arrival times demanded by  
5 Dignity in its proposed contract with Applicant. Exhibit 87, Tr. Vol. 6, p. 1402-1406:10.

6 87. Maricopa Ambulance testified that it has "the financial capacity to service  
7 Dignity transports and still meet its other obligations under its CON." Tr. Vol. 7, p.  
8 1630:24-25, p. 1631:1-2. It also testified that it has the "operational capacity to gear up" to  
9 do so. Tr. Vol. 7, p. 1632:5-8. In fact, Maricopa Ambulance is already performing  
10 ambulance transports for Dignity. Tr. Vol. 7, p. 1630:3-4. Applicant offered no testimony  
11 that it was unhappy with the service currently being provided by Maricopa Ambulance.  
12

13 88. Maricopa Ambulance submitted evidence that, in recorded incidents where  
14 Dignity Health had complained about a lack of available ambulances or slow AMR  
15 response times, Maricopa Ambulance "was never called, and in every instance had they  
16 been called, they had available units to respond." Tr. Vol. 7, p. 1729:11-13.  
17

18 89. Applicant conceded that none of Dignity's criticisms regarding the AMR  
19 CON Holders rise to the level of "substandard performance" under 9 A.A.C. 25-903(B).  
20 Tr. Vol. 2, p. 326:22.  
21

22 90. In September 2016, Mr. O'Malley did not mention to Mr. Thomas that  
23 Dignity was not satisfied with AMR's performance. Tr. Vol. 6, p. 1414:8-11.  
24

25 91. Dignity and/or Applicant engaged the services of EMS Advisors in Arizona  
26 in January 2016 (Tr. Vol.3, p. 800:10) just two months after Dignity entered into a written  
27  
28



1 agreement with AMR. Tr. Vol. 2, p. 284:13.

2 92. Dignity's criticisms of the AMR CON Holders post-date Dignity's lawsuit  
3 against AMR (July 25, 2017) (Tr. Vol. 3, p. 605:23). Dignity's Mr. Matthew Karger  
4 testified that it was "May of 2018 when we recognized that there was a large issue that we  
5 were having with our interfacility ambulance transfers." Tr. Vol. 3, p. 637:5-7. Almost all,  
6 if not all, of Mr. Karger's testimony relates to incidents in 2018. Tr. Vol. 3, p. 642, 643,  
7 646, 656, 660, 662. Also, Dignity's Mr. Brandon Hestand testified that (1) although Mr.  
8 O'Malley was not normally someone he would report to, Mr. O'Malley had specifically  
9 asked him to bring *negative* AMR experiences to his attention (Tr. Vol. 3, p. 617:23-25, p.  
10 618:1-2); and (2) he was *not* requested to send *positive* experiences with AMR to Mr.  
11 O'Malley (Tr. Vol. 3, p. 621:2-6).

12 93. Applicant did not mention any criticisms about AMR or its service in its  
13 Application. Exhibit ADHS 1-0004.

14 94. Dignity has never filed a formal complaint about AMR's arrival times, or  
15 any other issues, with the Department. Tr. Vol. 3, p. 697:7-10.

16 95. ABC has been performing IFTs in Maricopa County since 2015. Tr. Vol. 6,  
17 p. 1392:25.

18 96. ABC has invested heavily in the capital infrastructure supporting its  
19 operations, as well as CON and start-up expenses, in the amount of approximately  
20 \$2,061,235 since 2013. Tr. Vol. 6, p. 1398:8-17.

21 97. ABC has been fulfilling all of its duties as a regulated provider of a public  
22 service. Tr. Vol. 6, p. 1406:22-24.

1 98. ABC's arrival times are exemplary. Exhibit 87, Tr. Vol. 6, p. 1402-1406:10.

2 99. There was confusion among Dignity's and Applicant's witnesses regarding  
3 what constitutes a "Dignity facility," a "Dignity affiliate," and a "Dignity patient." Tr.  
4 Vol. 1, p. 179:15-25, Tr. Vol. 3, p. 843:13-19. It appears that Dignity would like this CON  
5 to serve its patients at least at its 74 related facilities (Tr. Vol. 1, p. 75:18-23), and patients  
6 that have visited its facilities (Tr. Vol. 3, p. 802:3, 843:13-19).

8 100. Dignity owns 50% of a health plan called Mercy Care. Tr. Vol. 1, p. 80:1-6.

9 101. Dignity's Arizona CEO, Linda Hunt, sits on the board of Mercy Care. Tr.  
10 Vol. 1, p. 80:6.

12 102. Mercy Care and Mercy Maricopa (now owned by Mercy Care) (Tr. Vol. 1,  
13 p. 80:13-14) are ABC customers responsible for 54.8% of ABC transports in 2017, and  
14 47.9% of ABC transports in 2018 (to the date of the hearing). Tr. Vol. 6, p. 1418:7-24, p.  
15 1419:10-16.

17 103. In a contemporaneous note made by Mr. Thomas immediately after a phone  
18 conversation with Mr. O'Malley on September 22, 2016, Mr. Thomas wrote that Mr.  
19 O'Malley had expressly stated that "The plan in Maricopa County is to provide services to  
20 all Dignity Health Facilities and then the Dignity partners such as Mercy Care where they  
21 own 50% of that company." Exhibit ABC 7, Tr. Vol. 6, p. 1420-1421. Mr. O'Malley  
22 expressly mentioned Mercy Care to Mr. Thomas on September 22, 2016. Tr. Vol. 6, p.  
23 1420:24-25, p. 1421:1.

25 104. Dignity (through Mr. O'Malley) has stated its intent and desire to create an  
26 "integrated delivery network" (Tr. Vol. 1, p. 201:24) through "wholly owned enterprises,"  
27  
28

1 “physician groups,” and “partnerships.” Tr. Vol. 1, p. 202:2-5.

2 105. Dignity and Applicant were both free to testify at the hearing that they  
3 undertake *not* to instruct or encourage Mercy Care to move transports away from ABC. A  
4 search of the sworn testimony providing any such assurance yields nothing.

5 106. Dignity is a 50% owner of an accountable care organization called Arizona  
6 Care Network (“ACN”). Tr. Vol. 1, p. 78:23, 127:7-8.

7 107. ACN is a “physician group” – through which Dignity intends to “integrate”  
8 its “delivery service.” Tr. Vol. 1, p. 78:17-24.

9 108. Dignity’s Linda Hunt is chair of the oversight board of ACN. Tr. Vol. 1, p.  
10 79:3-4.

11 109. A wholly-owned subsidiary of Dignity is the employer of ACN employees.  
12 Exhibit ABC 53, Tr. 1, p. 129:2, p. 128:14-21.

13 110. ACN holds out that it “retains 89 percent of referrals in-network.” Exhibit  
14 ABC 25, Tr. Vol. 6, p. 1424:22, p. 1425:12-13.

15 111. ACN has contracted with Mercy Care, and thus Mercy Care is part of  
16 ACN’s referral network. Tr. 1, p. 129:20-23, Exhibits ABC 23 and 24, Tr. Vol. 6, p. 1422-  
17 1423.

18 112. If ABC loses Mercy Care transports to Applicant, ABC will suffer  
19 significant financial harm. Based on ABC’s 2017 ARCR and rates, ABC’s income would  
20 go from a positive net income of \$52,622.00, to a negative net income of \$726,346.00, for  
21 a total income loss of \$778,968.00. Exhibit ABC 81, Tr. Vol. 6, p. 1432:10.

22 113. Applicant’s financial expert did not perform any analysis of the financial  
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24  
25  
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1 impact assessment provided by ABC. Tr. Vol. 4, p. 1061:22-24, p. 1102:15-24.

2 114. Applicant provided no evidence to contradict ABC's financial impact  
3 assessment.

4 115. If the Department grants ABC's pending rate increase application, ABC's  
5 losses will increase as reflected in Exhibit ABC 90. Exhibit ABC 90, Tr. Vol. 6, p. 1434-  
6 1436, p. 1440:14-15, p. 1441:15-17.

7 116. Applicant's projection that it can perform 11,315 transports is a "statistical  
8 impossibility," based on an analysis of unit hour utilization, "with 4.5 ambulances, spread  
9 across a very wide geography." Tr. Vol. 7, p. 1741:19-21, p. 1742:2-3.

10 117. In 2015, in Nevada, Applicant performed approximately 8,000 transports  
11 with 14 or 15 ambulances. Tr. Vol. 4, p. 1122:14-20.

12 118. Industry expert of 50 years, Mr. Roy Ryals, testified that Applicant will be  
13 unable to meet its proposed performance standards. Tr. Vol. 7, p. 1744:10-16.

14 119. Applicant's COO testified that Dignity's expectations of Applicant are too  
15 high. When asked whether "what some of the staff at urgent cares ... desire isn't  
16 necessarily in line with what the contractual response times that you have agreed to with  
17 Dignity," he conceded "possibly. They're going to need to be educated, because that's  
18 what we're going to do." Tr. Vol. 5, p. 1351:18-25. And "[Ms. Kells] wants 30 minutes or  
19 less on every single transport from those two [Dignity] facilities. How are you going to do  
20 that?" His response: "I'm not." Tr. Vol. 5, p. 1356:23-25, p. 1357:1.

21 120. Applicant's ARCRs (both the original and amended versions) represent that  
22 Applicant (RBR Management LLC dba Community Ambulance) owns the ambulances to  
23  
24  
25  
26  
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1 be used by Applicant. Exhibits ADHS 1 (ADHS 1-0088) and 12 (ADHS 12-0023).

2 121. Applicant's CEO testified that the ambulances are in fact titled in the name  
3 of AMG (the company he co-owns with Applicant's COO): "they [AMG] purchase the  
4 ambulances, lease them back through to the ambulance company [RBR]." Tr. Vol. 4, p.  
5 998:11-17. Title passes to RBR only when the ambulances are "paid off." Tr. Vol. 4, p.  
6 999:14.

8 122. No lease agreements were provided by Applicant reflecting a lease  
9 arrangement, or were even acknowledged to exist by Applicant's CEO. Tr. Vol. 4, p.  
10 1000:8-10.

12 123. Applicant's financial expert was "not aware of any other ownership of the  
13 ambulances" when asked whether it was his "understanding that all six ambulances on the  
14 ARCR are owned by RBR." Tr. Vol. 4, p. 1081:2-5.

16 124. Applicant's expert testified that he reviewed Applicant's financial  
17 statements from Nevada for 2015, and that he does not recall seeing any expenses for  
18 ambulances leases. Tr. Vol. 4, p. 1101:18-21.

19 125. Applicant's CEO testified that AMG owns "some" of the ambulance  
20 equipment referenced in the ARCRs. Tr. Vol. 4, p. 1120:12-25.

22 126. Applicant did not submit any of its financial statements to the Department,  
23 or as exhibits in these proceedings.

24 127. Loaded billable miles in the initial ARCRs was 90,520. Tr. Vol. 5, p.  
25 1138:19. Loaded billable miles in Applicant's amended ARCRs was 177,646. Exhibit  
26 ADHS 12-0004. Applicant's CEO testified that the first number was calculated on the  
27

1 location of Dignity facilities, and that the same methodology was used in the amended  
2 ARCRs. Tr. Vol. 5, p. 1139:6-22. Applicant provided no explanation as to how or why the  
3 loaded billable miles was inflated to 177,646, given that the Dignity facilities have not  
4 moved.

5  
6 128. Applicant's projected total operating revenue from the initial ARCRs to the  
7 amended ARCRs goes up from approximately \$5.5 million to \$7.1 million (Exhibit ADHS  
8 1-0071, line 10, and ADHS 12-0006, line 10), which is about 29%. Tr. Vol. 5, p. 1140:3-23.  
9 The accounts receivable number goes up from \$7.2 million to \$7.4 million (Exhibit ADHS  
10 1-0091, line 2, and ADHS 12-0026, line 2), which is only 2%. Tr. Vol. 5, p. 1141:17.  
11 Applying the same collection rate that Applicant used in its initial ARCRs (65%) to its  
12 amended ARCRs shows that Applicant has overstated its accounts receivable by  
13 \$1,141,742. Applicant's cash balance on its cash flow statement then changes from  
14 positive \$858,697 (ADHS 12-0027, line 29) to negative \$320,205 ( $\$858,697 - \$1,141,742$   
15  $= - \$320,205$ ).  
16  
17

18 129. In Applicant's contract with Dignity, Applicant agreed to perform  
19 "Convalescent Wheelchair or Gurney" services for Dignity "through qualified  
20 subcontractors or Community-owned vehicles." Exhibit CA 17 (p.1), Tr. Vol. 2, p. 417-  
21 419. Applicant plans on "transferring those calls" to other providers. Tr. Vol. 5, p. 1173:6.  
22 If Applicant complies with this part of its agreement with Dignity, this would necessarily  
23 impose on the resources of Applicant in the form of allocation of expenses for a dispatch  
24 center, for supervisors, for HR and other expenses associated with overseeing the  
25 subcontract. Applicant failed to account for such additional expenses, resulting in an  
26  
27  
28

1 understatement of expenses in its ARCRs.

2 130. Applicant testified that it has never performed stretcher van services in the  
3 past. Tr. Vol. 5, p. 1172:20-22.

4 131. In a written note between Applicant's agents prior to submission of the  
5 Initial Application (Exhibit ABC 63, Tr. Vol. 4, p. 1097:10), Mr. Dean Taylor (who  
6 prepared the ARCRs for Applicant) requested information from Applicant. Tr. Vol. 4, p.  
7 1073:4-17. When asking questions regarding fleet service, he was advised that "the  
8 Sprinters more than likely will not come to Arizona." He noted "Why are we not loading  
9 what we expect to do in the ARCR?" Tr. Vol. 5, p. 1154:17-19.

10 132. In response to Mr. Taylor's observation that "no wages are shown for  
11 Officers/Owners," Applicant or Applicant's agent responded that: "Like Hellsgate, they  
12 do not want to show, the owners do not get a wage." Exhibit ABC 63, Tr. Vol. 5, p.  
13 1153:21-25, p. 1154:1-4

14 133. Applicant's CEO and COO received approximately \$1.3 million in  
15 management fees, paid by Applicant to them, from Applicant's Nevada operations in  
16 2017. Tr. Vol. 5, p. 1157:4-8. Applicant has "waived the management fee for the first  
17 year" in Arizona. Tr. Vol. 4, p. 992:16-17. However, the parties are "in the middle of  
18 negotiations" as to whether it will be payable in year two. Tr. Vol. 4, p. 992:23.

19 Applicant's CEO is anticipating a management fee in year two. Tr. Vol. 5, p. 1159:2-4.

20 134. Applicant's ARCRs show zero discounts to Dignity Health. Applicant and  
21 Dignity included discounts in their contract. Exhibit CA 17, Tr. Vol. 5, p. 1159:22-23.  
22 The lack of discounts in its ARCRs inflates Applicant's projected revenues. According to

1 the Department's Aaron Sams, "Most people that offer a discount, the percentage is 30  
2 percent." Tr. Vol. 4, p. 1018:18-19. Applying this percentage to Applicant's Nevada  
3 Dignity revenue of \$3 million, this could be an inflation of as much as \$900,000.00.  
4 During the hearing, the Department testified that (based on a different hypothetical  
5 calculation of lost revenue through discounts - Tr. Vol. 4, p. 1020:15-22) this would be a  
6 "fair amount of lost revenue that's not reflected in the ARCRs." Tr. Vol. 4, p. 1020:24-25,  
7 p. 1021:1.

8  
9 135. Applicant models its proposed Arizona operations on its Nevada operations.

10 136. Applicant proposes less staff in Arizona than its Nevada operations. Tr. Vol.  
11 4, p. 997:9; Exhibit 12-0009, line 22.

12 137. Applicant proposes to use only part-time staff in Arizona. Tr. Vol. 4, p.  
13 1069:8-13. Applicant's expert, Mr. Michael Evans, testified that, in his decades of  
14 preparing over 200 ARCRs (Tr. Vol. 4, p. 1028:1), he does not recollect ever having  
15 prepared an ARCR for an ambulance provider that was going to rely solely on part-time  
16 employees. Tr. Vol. 4, p. 1098:19-22.

17 138. Applicant's Nevada employees (fleet, payroll and accounting functions  
18 included) will overlap with Arizona operations. Tr. Vol. 5, p. 1142:14-18.

19 139. Applicant proposes to pay no overtime to employees in Arizona. Tr. Vol. 4,  
20 p. 1000:25, p. 1001:1-6. Applicant pays overtime in Nevada. Tr. Vol. 4, p. 1001:18-19

21 140. Maricopa County is a much larger service area than Clark County, Nevada.

22 141. Applicant's initial and amended ARCRs represent that "cost of goods sold"  
23 will be zero. Exhibit ADHS 12-0007. Applicant's COO testified that this is "unrealistic."  
24 Tr. Vol. 5, p. 1349:7-17.  
25  
26  
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1           142.     Applicant’s COO testified that it was “a little challenging to me” when he  
2 reviewed what was represented in the ARCRs, because what he plans to do in reality “is a  
3 little different than it says in the” ARCRs. Tr. Vol. 5, p. 1329:18, p. 1329:23-24. He  
4 testified that, in spite of what Applicant had put into the ARCRs, Applicant would need  
5 employees to work on average a 42-hour work week, and be paid overtime. Tr. Vol 5, p.  
6 1330:8-16.  
7

8           143.     Dignity’s Mr. O’Malley testified that Dignity has “members place on the  
9 board of managers that are providing that ultimate oversight,” and “only in a partnership  
10 kind of a situation like this do you see that level of oversight and control and influence  
11 and ability to develop and direct policy, procedure.” Tr. Vol. 2, p. 288:15-16, p. 289:19-  
12 22.  
13

14           144.     Applicant has been in operation for eight years in Nevada but did not  
15 provide any its financial statements for any of its years in operation.  
16

17           145.     There is no documentary evidence on the record showing Applicant’s  
18 operating expenses, balance sheet or cash flows in Nevada.  
19

20           146.     The only financial records Applicant attached to its Application are  
21 Dignity’s 2014 and 2015 consolidated financial statements. Exhibit ADHS 1-0094 to 1-  
22 0148.  
23

24           147.     Applicant did not provide the financial statements of AMG, the 49.9%  
25 owner and the managing member of Applicant. Tr. Vol. 3, p. 774:5.  
26

27           148.     Dignity testified that there are “mechanisms” in place to make contributions  
28 or loans to Applicant “through a loan ... as well as a capital call depending upon what

1 level of commitment would be needed.” Tr. Vol. 1, p. 86:1-7.

2 149. Applicant testified that, as its “source and amount of funding for its start-up  
3 operation” in Maricopa County, it has a line of credit for capital, and another line of credit  
4 for operational expenses. Tr. Vol. 3, p. 835:9-22.

5 150. Applicant’s CEO was unsure how much cash is available in Applicant’s  
6 bank account, offering a range of “somewhere between 500- to \$700,000 cash.” Tr. Vol.  
7 3, p. 835:23.

8 151. The lines of credit and cash availability is for the RBR company as a whole  
9 and not just for the start-up operations of Arizona.

10 152. The only written evidence submitted by Applicant to support its financial  
11 good standing was one letter from its Nevada bank, confirming an existing line of credit  
12 (with no reference made to any start-up operations in Arizona). Exhibit CA 147, Tr. Vol.  
13 5, p. 1185:5-12.

14 153. During about April 2017, Applicant conducted a survey of its employees,  
15 asking questions like “do you believe Community has gotten better or worse in the time  
16 you’ve been part of the organization?” Exhibit ABC 5 - 0001, Tr. Vol. 5, p. 1160:23. In  
17 answer to the question, an employee wrote:

18  
19  
20  
21  
22 There is and has been a major issues with follow though and  
23 communication, from the management of the company. Very regularly,  
24 employees are told things, and there is never any follow though, it's  
25 come to a point where pretty much anything that is said can just be  
26 disregarded, because we know it won't actually happen. This goes for  
27 statement/promises to individual employees, and company wide as well.  
28 It doesn't seem as though its done to with malice, but in the end it has  
created a complete lake of faith in those running the company. One  
example, ambulances. Mistakes happen, and the Mccoy Miller trucks  
were a mistake, there has been many statements that have gone

1 unfulfilled. Even with the retrofitting that is going on with them, the  
2 trucks still don't hold up, and are unsafe. Even if the trucks were great,  
3 we still don't have enough, and we have all been told multiple times that  
4 more trucks are on the way. There's the rumor that we have to go through  
5 the process and wait for the company to sue McCoy Miller, and that's fine,  
6 but we still need more trucks. And from what the employees see, it's not  
7 like the company can't buy more trucks, we keep hiring more people,  
8 and keep hearing how we're expanding to Arizona. There are many other  
9 examples of the lack of follow through from management, but this is one  
10 that everyone can agree on. Exhibit ABC 5 - 0002 (#22).

11 While the survey contains some complimentary messages, this complaint appears to  
12 sum up the gist of many of the employee complaints (over 25 pages) included in the  
13 survey - "unkept promises, no raises, it feels as if concerns fall upon deaf ears" (Exhibit  
14 ABC 5 - 0002 (#31)); "[a]s Community has grown I've seen them take less care for  
15 employees and stretch limited supplies to unsafe means" (Exhibit ABC 5 - 0003 (#40));  
16 "there's no longer any follow through on promises made by management" (Exhibit ABC  
17 5 - 0003 (#45)); "I don't think Community puts patient care first. I think profit is the top  
18 priority" (Exhibit ABC 5 - 0005 (#21)).

19 154. Applicant submitted eight letters from entities in support of its Application  
20 ("Letters of Support"). Exhibits ADHS 17-24.

21 155. The Letters of Support are substantively identical. *See* Exhibits ADHS 17-  
22 24.

23 156. The Letters of Support were drafted by Applicant's agent, EMS Advisors.

24 157. Mark Nichols, Fire Chief of Daisy Mountain Fire District, and author of  
25 Exhibit 24, testified that Dignity represented that Applicant's proposed service area was  
26 only to serve "Dignity facilities." Tr. Vol. 5, p. 1448:9-19. For this reason, he did not  
27 perceive that the Application would be a threat to Daisy Mountain's CON (Tr. Vol. 5, p.  
28

1 1449:7-11) because there are no Dignity facilities within Daisy Mountain's CON district  
2 (Tr. Vol. 6, p. 1459:19-21).

3 158. Chief Nichols testified that the letter he signed was a "form letter" (Tr. Vol.  
4 5, p. 1449:12-13), that was provided by Applicant's agent, EMS Advisors, that he put on  
5 Daisy Mountain letterhead, signed and sent back. Tr. Vol. 6, p. 1460:1-9.

7 159. None of the signatories of the remaining Letters of Support were called by  
8 Applicant to testify.

9 160. Applicant's expert, Dr. David Argue, testified that "competition is generally  
10 helpful in healthcare markets" because "it's been shown to result in better quality and  
11 lower prices of services." Tr. Vol. 5, p. 1208:7-9. He conceded that, in the context of  
12 CON applications, "the price piece" is not relevant. Tr. Vol. 5, p. 1208:10. He opined that  
13 "it really comes down to the purchaser" (Tr. Vol. 5, p. 1209:1-2), but immediately  
14 conceded that it had nothing to do with the "actual purchaser," but was rather "the  
15 hospital" that "arrange[s] these services and make[s] contractual agreements with  
16 providers." Tr. Vol. 5, p. 1209:2-6.

19 161. ABC has invested a total \$2,061,236 since 2013. Tr. Vol. 6, p. 1398:16-18.

21 162. Applicant's financial expert, Mr. Michael Evans, testified that there would  
22 be "redundancy, certainly" if the Applicant is granted a CON, and that it is "less efficient  
23 in terms of total expenses" when you add expense to the system. Tr. Vol. 4, p. 1070:4-18.

24 163. Applicant's "competition" expert, Dr. Argue testified that one of the  
25 purposes of CON regulation is to avoid "splintering of the market," "where you have too  
26 many providers coming in so that they're not able to be financially stable, financially  
27

1 viable if you spread that demand over too many ... suppliers.” Tr. Vol. 5, p. 1218:7-11.

2 C. **CONCLUSIONS OF LAW**

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

5 165. Applicant, as “the party asserting a claim, right, or entitlement” to a CON,  
6 has the burden to prove, by a preponderance of the evidence, that the proposed CON  
7 should be granted. A.A.C. R2-19-119(A) and (B)(1).

8 166. Intervenors have no burden in these proceedings because they are not  
9 “asserting an affirmative defense,” which, where appropriate, shifts the burden of  
10 establishing such affirmative defense. A.A.C. R2-19-119(B)(2).

11 167. The preponderance of the evidence is “[t] greater weight of the evidence not  
12 necessarily established by the greater number of witnesses testifying to a fact but by  
13 evidence that has the most convincing force; superior evidentiary weight that, though not  
14 sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a  
15 fair and impartial mind to one side of the issue rather than the other.” BLACK’S LAW  
16 DICTIONARY 1301 (9<sup>th</sup> ed. 2009).

17 168. The Director and ADHS have jurisdiction over ground ambulance services  
18 under Arizona Revised Statutes Title 36, Chapter 21.1, Article 2 and A.A.C. Title 9,  
19 Chapter 25, Articles 9-11.

20 169. The Legislature, through the enactment of the CON statutes, mandated a  
21 fully regulated ambulance industry.

22 170. ADHS, through BEMSTS, regulates ambulance services in the State of  
23 Arizona, including the CON application process and the CON renewal process. *See*

1 A.R.S. §§ 36-2232 through 36-2246.

2 171. In addition to the statutory framework, the ADHS adopted rules to regulate  
3 ambulance and ambulance services. *See* A.A.C. R9-25-901 through R9-25-1110.

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

6 173. A.R.S. §§ 36-2233 governs the issuance of a CON for the operation of  
7 ambulance services in this State, and requires in pertinent part:  
8

9 A. That a CON applicant must apply for a CON on forms prescribed by the  
10 Director. A.R.S. §§ 36-2233(A);

11 B. That a CON applicant must demonstrate that public necessity requires the  
12 proposed service or any part of the service. A.R.S. §§ 36-2233(B)(2); and  
13

14 C. That a CON applicant must demonstrate that it is fit and proper to provide the  
15 service. A.R.S. §§ 36-2233(B)(3).  
16

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

18 175. “Public necessity” means “an identified population needs or requires all or  
19 part of the services of a ground ambulance service.” A.A.C. R9-25-901(33).  
20

21 176. In “determining public necessity,” the Director considers, among other  
22 things, whether issuing a certificate of necessity to more than one ambulance service  
23 within the same service area (as in the present case) is in the public's best interest. A.A.C.  
24 R9-25-903(A)(4).  
25

26 177. “In deciding whether to issue a certificate of necessity to more than one  
27 ground ambulance service for convalescent or interfacility transport for the same service  
28

1 area or overlapping service areas,” the Director considers the following:

- 2 1. The factors in subsections (A)(2), (A)(3), (A)(4)(a), (A)(4)(c),  
3 (A)(4)(d), (A)(5), and (A)(6);
- 4 2. The financial impact on certificate holders whose service area includes  
5 all or part of the service area in the requested certificate of necessity;
- 6 3. The need for additional convalescent or interfacility transport; and
- 7 4. Whether a certificate holder for the service area has demonstrated  
8 substandard performance. A.A.C. R9-25-903(B).

9 178. In determining public necessity, the Director shall also consider any  
10 information introduced at hearing on the applicable factors of A.A.C. R9-25-903.

11 179. Further guidance on public necessity can be found in the Department’s  
12 Guidance Document GD-099-PHS-EMS. Exhibit ADHS 15.

13 180. The Guidance Document states that “In general, the Statutes and Rules  
14 ensure that all residents of Arizona have access to ambulance service, whether they live in  
15 an urban area ... or a rural area.” (Guidance Document, p. 1, Heading 1.)

16 181. The Guidance Document states that “The Statutes and Rules seek to ensure  
17 that ambulance services have sufficient financial strength and volume of business to  
18 continue operations to provide Arizonas with reliable service.” (Guidance Document, p. 1,  
19 Heading 1.)

20 182. The Guidance Document states that “A common misconception is that the  
21 Statutes and Rules are solely designed to limit the number of ambulance services in  
22 Arizona. This is not the case, as portions of the State have multiple providers with  
23 overlapping service areas where more than one ambulance company is providing services.  
24 However, the Statutes and Rules do establish a requirement that anyone seeking to start an  
25 ambulance service ... must be able to demonstrate that there is a public necessity for the  
26  
27  
28

1 proposed service and ensure that protections are in place for citizens living in rural areas.”  
2 (Guidance Document, p. 1, Heading 1.)

3 183. The Guidance Document states that “The authority to operate a CON is  
4 based upon a determination of public need for the service. ... This Rule recognizes that the  
5 primary focus should be on the interests of the public and not upon protecting the territory  
6 or service interests of current providers in the area, although the impact on the current  
7 provider(s) of service, and on the public in and near the application area, are factors to be  
8 considered.” (Guidance Document, p. 2, Heading 4.)  
9

10 184. The Guidance Document states that “The Department believes that the  
11 primary focus for the determination of public necessity is made with reference to  
12 analyzing the needs of the community, the adequacy of current services provided,  
13 maximizing the use of contemporary EMS protocols that have been demonstrated to save  
14 lives, and ensure cost controls.” (Guidance Document, p. 2, Heading 4.)  
15

16 185. The Guidance Document states that “The Director will use the information  
17 submitted in the application for a CON, information provided by the current service  
18 provider, and other matters that may be relevant to the determination of public necessity  
19 ...” (Guidance Document, p. 2, Heading 4.)  
20

21 186. The Guidance Document states that “Applicants wishing to provide  
22 interfacility transports may propose ‘Interfacility Arrival Times’ and have those times  
23 measured for compliance purposes.” (Guidance Document, p. 4, Heading 5.)  
24

25 187. According to the Guidance Document, information to be considered  
26 includes:  
27  
28



- 1           ▪ A plan for a robust, on-going benchmarking and performance improvement process that encompasses all
- 2           components of the EMS system from emergency medical dispatch through emergency department arrival;
- 3           ▪ A plan to collect and submit electronic patient care reports consistent with BEMSTS guidelines;
- 4           ▪ A plan to adopt clinical guidelines and operating procedures for time sensitive illness consistent with best practice guidelines;
- 5           ▪ A plan to initiate guideline-based pre-arrival instructions for all callers accessing 9-1-1 for assistance;
- 6           ▪ Evidence of regular attendance and participation in meetings of the regional and State EMS Councils;
- 7           ▪ A plan to ensure that ambulance service will be maintained and improved for rural communities county islands;
- 8           ▪ Assurance that the service model will be cost effective and not result in higher ambulance rates;
- 9           ▪ Assessment of the impact of a successful application on individuals living within and in rural and wilderness areas adjacent to the
- 10          service area requested and Applicant’s plan to address that impact;
- 11          ▪ Assessment of the financial and operational impact of a successful application on the ability of an existing CON holder to service
- 12          residents within and living in rural and wilderness areas adjacent to the CON service area requested; and
- 13          ▪ A plan to ensure continued ambulance service in rural and wilderness areas should the current CON holder be unable to serve
- 14          those areas. (Guidance Document, p. 2-3.)

15           188.     “Fit and proper” means an applicant “has the expertise, integrity, fiscal

16           competence and resources to provide ambulance service in the service area.” A.R.S. § 36-

17           2201(21).

18           189.     The Director has the authority to determine, fix, alter, and regulate just,

19           reasonable and sufficient rates and charges for the provision of ambulances, including

20           rates and charges for ALS service, BLS service, mileage, standby waiting, subscription

21           service contracts, and other contracts related to the provision of ambulance services.

22           A.R.S. § 36-2232(A)(1); A.R.S. § 36-2239; A.A.C. R9-25-1101 *et seq.*

23           190.     ADHS can set uniform rates and charges for common service areas when all

1 ambulance services in that common service area request uniform rates and charges. A.R.S.  
2 § 36-2232(E).

3 191. In determining rates, the Department “shall establish rates to provide for a  
4 rate of return that is at least 7% of gross revenue.” R9-25-1106(C).

5 192. Rate of return on gross revenue is partially a function of billings and  
6 collections because the Department considers “income statement,” “cash flow,” and  
7 “reimbursable and non reimbursable charges,” among other things. R9-25-1106(A).

8 193. An applicant for an initial certificate of necessity must submit to the  
9 Department an application packet that includes a “projected” Ambulance Revenue and  
10 Cost Report (“ARCRs”). R9-25-902(A)(3)(b).

11 194. An applicant for an initial certificate of necessity must submit to the  
12 Department an application packet that includes “the information and documents specified  
13 in R9-25-1101, if the applicant is requesting to establish general public rates.” R9-25-  
14 902(A)(3)(f).

15 195. An applicant for a certificate of necessity, or a certificate holder applying for  
16 initial general public rates, shall submit an application packet to the Department that  
17 includes a copy of the applicant’s “most recent financial statements or an Ambulance  
18 Revenue and Cost Report,” as well as a “projected income statement and projected cash-  
19 flow statement.” R9-25-1101(A)(3) and (4).

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

1           197.     A CON is not a franchise, may be revoked by the Director, and does not  
2 confer a property right upon its holder. A.R.S. § 36-2236(A).

3           198.     Dr. David Argue’s premise -- namely, that open competition would benefit  
4 quality and price -- was rejected by Arizona’s voters in 1982, when the current regulatory  
5 model was introduced to incorporate “public necessity” as a requirement.  
6

7           199.     Prior to 1980, Arizona ambulance companies were regulated by the Arizona  
8 Corporation Commission as public service corporations. *Southwest. Ambulance, Inc. v.*  
9 *Arizona Dep’t of Health Servs.*, 183 Ariz. 258, 259–60, 902 P.2d 1362, 1363–64 (Ct. App.  
10 1995), citing Ariz. Const. art. XV, § 2 historical note; *Emergency Medical Transport, Inc.*  
11 *v. City of Tempe*, 157 Ariz. 260, 261, 756 P.2d 929, 930 (App.1988).  
12

13           200.     As a result of a 1980 general election referendum, for a brief period (1980  
14 to 1982), ambulance companies were deregulated. *Id.*

15           201.     Within two years, in November 1982, as a result of another general election  
16 referendum, ambulance companies were again made subject to regulation. This time,  
17 rather than including them in the definition of “public service corporation” (and thus  
18 subject to the jurisdiction of the Arizona Corporation Commission), the constitution made  
19 them subject to regulation directly by the legislature. *Id.* at 260, citing Ariz. Const. art.  
20 XXVII, § 1.  
21

22           202.     In the 1982 referendum, the arguments both for and against the re-regulation  
23 of the ambulance industry were set out in literature published at the time. Opponents of  
24 the 1982 referendum made the same arguments that Applicant makes here. They warned  
25 against the new constitutional amendment (which is the current constitutional provision)  
26  
27  
28

1 because “The present system of free competition results in better service and lower  
2 charges for persons needing ambulance services. Proposition 100 would bring back a  
3 system of regulated monopoly for ambulance services, and the public would suffer  
4 because of poor service, delays and additional costs.” Exhibit ABC 8 - 0005, Tr. Vol. 5, p.  
5 1442:22.  
6

7 203. Arguments in favor of passing the constitutional amendment included that  
8 “Ambulances and ambulance services should be regulated to insure that all areas of the  
9 state are adequately served.” *Id.*  
10

11 204. Opponents to regulation warned that “Proposition 100 attempts to turn back  
12 the clock by returning government regulation to the ambulance industry. Arizonans should  
13 vote to keep competition in the ambulance industry by saying no to Proposition 100.” *Id.*  
14

15 205. The arguments of opponents to regulation were soundly rejected by the  
16 electorate and “government regulation” was re-introduced to govern the provision of  
17 ambulance services (in the form of having to prove various stringent requirements,  
18 including “public necessity”).  
19

20 206. “[W]hen an entity dedicates private property to a use in which the public has  
21 an interest, it grants the public an interest in that use and must submit to regulation for the  
22 public good. The right to public protection then outweighs the right of competition.” *Sw.*  
23 *Transmission Co-op., Inc. v. Arizona Corp. Comm'n*, 213 Ariz. 427, 432, 142 P.3d 1240,  
24 1245 (Ct. App. 2006) (internal citations omitted).  
25

26 207. “A system which did not provide certificate holders with an opportunity to  
27 provide adequate service at reasonable rates [before deletion of a certificated area could  
28

1 be made] would be antithetical to the public interest for several reasons. First, it would  
2 encourage price competition between public service corporations, the very mode of  
3 operation which the Legislature has rejected. Second, it encourages over-extensive  
4 development. ... The consuming public will ultimately pay for this needless construction  
5 ...Third, it fails to reward a public service corporation for taking on the risks and  
6 obligations concomittant to certification. ... Finally, it discourages service by companies  
7 that would supply service to sparsely populated areas today, at a marginal profit, ...”  
8 *James P. Paul Water Co. v. Arizona Corp. Comm'n*, 137 Ariz. 426, 429–30, 671 P.2d 404,  
9 407–08 (1983).

12 208. “Public convenience and necessity are not furthered in most cases by the  
13 maintenance and operation of a number of competing plants or systems of the same  
14 character to supply a locality, but that they are generally far better served in the long run  
15 by the maintenance only of the smallest number of such instrumentalities which will  
16 adequately serve the public needs.” *Corporation Commission v. People's Freight Line,*  
17 *Inc.*, 41 Ariz. 158, 16 P.2d 420 (1932).

19 **D. HEARING ISSUES**

20 209. Pursuant to the Notice of Hearing, the following issues were established,  
21 and based upon Applicant’s Application package, as amended, the exhibits admitted  
22 during the course of the hearing, the testimony of the witnesses, the issues were  
23 considered as follows:  
24

25 A. Whether public necessity requires the service or any part of the service proposed by  
26 the Applicant, and if such service would be in the public's best interest, as required by  
27 A.R.S. § 36-2233(B)(2), and A.A.C. R9-25-903. Additionally,  
28

1           1. The impact of a successful application on individuals living in rural and  
2 wilderness areas adjacent to the service area requested and Applicant's plan to  
3 address that impact. *See* A.A.C. R9-25-903(A)(6).

4           2. The impact of a successful application on the financial and operational ability  
5 of an existing C.O.N. holder to serve residents living in rural and wilderness areas  
6 adjacent to the C.O.N. service area requested. *See* A.A.C. R9-25903(A)(6).

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

10           210.     The evidence presented established that Applicant does not propose to  
11 provide services to the general public, but rather it proposes to provide services only to  
12 Dignity Health, its majority owner.

13           211.     Dignity Health's "need" does not constitute public necessity.

14           212.     Granting a CON to Applicant shifts greater risk to the existing CON  
15 holders, who will likely have a higher percentage of bad debt.

16           213.     The higher the bad debt of a provider, the more necessary it becomes to  
17 raise a provider's rates.

18           214.     Granting a CON to Applicant undermines the existing CON holders'  
19 financial strength and volume of business to continue operations to provide Arizonans  
20 with reliable service.

21           215.     The current CON holders in Maricopa County, including the Intervenors,  
22 are capable of providing compliant service to Dignity Health.

1           216.     Applicant’s projected ARCRs unreasonably understate expenses, and  
2     overstate revenue and cashflow, thus rendering the ARCRs unreliable.

3           217.     The Letters of Support are unreliable hearsay.

4           218.     While introducing evidence of the benefits of free-market competition,  
5     Applicant has failed to show that free-market competition is relevant to this Application  
6     because Applicant will not be competing for Dignity’s business.

7           219.     Dr. Argue’s opinion regarding the benefits of competition in this case is  
8     based on the false premise that “the hospital” (i.e. Dignity Health) is looking for  
9     “alternative ambulance service providers.” Dignity does not want Applicant to compete  
10    with other providers.

11          220.     In return for their initial and ongoing investments, each Intervenor has  
12    submitted to regulation for the public good, and taken on the risks and obligations  
13    concommittant to certification.

14          221.     The Intervenors have each “dedicated private property” to a use in which the  
15    public has an interest – ambulance services.

16          222.     The current CON holders in Maricopa County are performing their  
17    obligations in such a way that the system is fully able to meet the public need.

18          223.     Granting Applicant a CON would splinter the IFT market in Maricopa  
19    County, and result in a high risk to current CON holders of becoming financially less  
20    stable and financially less viable. This does not benefit the public.

21          224.     Applicant failed to establish by a preponderance of the evidence that public  
22    necessity requires its proposed service or part of its proposed service.

1           225.     Applicant failed to establish by a preponderance of the evidence that its  
2 proposed service would be in the public’s best interest.

3     B.     Whether the Applicant is fit and proper to provide the services proposed, as required  
4 by A.R.S. § 36-2233(B)(3). Fit and proper means that the Director determines that the  
5 Applicant has the expertise, integrity, fiscal competence and resources to provide the  
6 proposed ambulance service in the proposed service area. A.R.S. § 36-2201(21)

8           226.     In its ARCRs, Applicant overstates its projected cash flow and understates  
9 its projected expenses. Applicant has not met the requirements of showing that operations  
10 cash flow will cover operations expenses within the first year.

12          227.     Without Applicant’s financial records, it is difficult to assess whether the  
13 Applicant is fit and proper to run an ambulance company, or to establish rates for the  
14 Applicant. Without Applicant’s financial records, it is difficult to assess whether  
15 Applicant has been successful and/or profitable and/or fiscally competent and/or  
16 financially honest in its Nevada operations, or whether Applicant itself is financially  
17 sound and stable.

19          228.     Applicant failed to establish by a preponderance of the evidence that it is fit  
20 and proper to provide the proposed service.

22     C.     Whether the Applicant's proposed service area as set forth below is in the best  
23 interests of the public, or if some other service area should be granted by the Director of  
24 the Department, as required by A.R.S. §§ 36-2232(A)(3), 36-2233(B)(2), 36-2233(E);  
25 A.A.C. R9-25-902 and A.A.C. R9-25-903

27          229.     Applicant has not shown that its proposed service area is in the best interests  
28



1 of the public.

2 230. The testimony shows that Applicant's proposed service area consists only of  
3 Dignity facilities and patients. Such a service area does not comport with the service area  
4 requested in the Application (Maricopa County), nor does it comply with the statute  
5 (A.R.S. § 36-2233(E), which requires a "metes and bounds" description).

6  
7 D. Whether the Applicant's proposed rates and charges, as set forth below, are just,  
8 reasonable, and sufficient or whether other rates and charges should be granted by the  
9 Director of the Department, as required by A.R.S. §§ 36-2232(A)(1) and 36-2239; A.A.C.  
10 R9-25-902, A.A.C. R9-25-903 and A.A.C. R9-25-1101 et. seq.

11  
12 231. Applicant applied for initial rates, and the Department responded, as follows  
13 (Exhibit ADHS 8-0003):

14

	<b>A.L.S.</b>	<b>B.L.S.</b>	<b>Mileage</b>	<b>Standby</b>	<b>Subscription</b>
15 Applicant Proposed Initial Rates	\$880.08	\$783.95	\$15.80	\$195.99	\$0
16 BEMSTS Proposed Initial Rates	\$898.52	\$801.73	\$13.52	\$200.43	\$0

17

18 232. The Applicant thereafter requested to participate in the Uniform Phoenix  
19 Rate Group. Exhibit ADHS 12-0001.

20 233. Applicant submitted no evidence that the Department's recommended rates  
21 are unjust, unreasonable or insufficient.

22 234. Applicant's proposed ALS, BLS and mileage rates are noncompliant with the  
23 requirements of ARS § 36-2232(A)(1) (requiring that a CON-holder's rates be "just,  
24 reasonable and sufficient"), as once the necessary adjustments are made to its *pro forma*  
25 ARCR (including the adjustments to include both understated and omitted expenses, and  
26 overstated revenue) in order to correct for all errors and omissions, Applicant will not be able  
27  
28

1 to operate at even a breakeven level. A.A.C. R9-25-1106(C) (defining "just, reasonable and  
2 sufficient" rates).

3 E. Whether the type and level of service proposed by the Applicant is in the best  
4 interest of the public, as required by A.R.S. § 36-2201(11) (b)-(c); A.A.C. R9-25-  
5 903(A)(4), (B), (C), and R9-25-901(26) and (51)

7 235. Applicant has not shown that its proposed service is in the best interests of  
8 the public, and thus it has not shown that its proposed type and level of service are in the  
9 best interests of the public.

10 **E. ORDER**

11 Based on the foregoing, it is determined that Applicant has failed to establish, by a  
12 preponderance of the evidence, both that public necessity requires its service and that it is fit  
13 and proper to provide the service proposed. It is therefore ORDERED denying Applicant's  
14 application for a certificate of necessity.  
15

16  
17 RESPECTFULLY SUBMITTED this 28th day of January, 2019.

18 HOFMEYR LAW PLLC  
19 By /s/ Adriane J. Hofmeyr \_\_\_\_\_  
20 Adriane J. Hofmeyr  
21 *Attorney for ABC Ambulance, LLC*

22 **CERTIFICATE OF SERVICE**

23 Original filed using the OAH electronic document filing system  
24 <https://portal.azoah.com/oedf> this 28th day of January, 2019 with copies provided to all  
25 parties on the approved mailing list this 25th day of July, 2018 by posting through the  
26 designated OAH website as [https://portal.azoah.com/oedf/documents/2015A-EMS-0190-](https://portal.azoah.com/oedf/documents/2015A-EMS-0190-DHS/index.html)  
27 [DHS/index.html](https://portal.azoah.com/oedf/documents/2015A-EMS-0190-DHS/index.html) in accordance with Case Management Order No. 1.  
28