Brendan Murphy, State Bar No. 021947
HENDRICKS MURPHY, PLLC
3101 North Central Avenue, Suite 970
Phoenix, Arizona 85012
(602) 604-2104
brendan@hendricksmurphy.com

Jeffrey Meyerson, State Bar No. 022600
THE MEYERSON LAW FIRM
2555 East Camelback Road, Suite 140
Phoenix, Arizona 85016
jeff@themeyersonfirm.com

Attorneys for Applicant
RBR Management, LLC
dba Community Ambulance

IN THE OFFICE OF ADMINSTRATIVE HEARINGS

In the Matter of: RBR Management, LLC dba Community Ambulance, Applicant.	Docket No. 2017-EMS-0104-DHS (EMS No. 0283) **COMMUNITY AMBULANCE'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW** (Assigned to the Honorable Tammy L. Eigenheer)

Applicant RBR Management LLC, dba Community Ambulance ("Applicant" or "Community Ambulance") hereby submits its proposed findings of fact and conclusions of law for the Court's consideration.

HENDRICKS MURPHY

FINDINGS OF FACT

BACKGROUND

Community Ambulance's Proposed Service Area and the Intervenors

1. On June 10, 2016, Community Ambulance filed an application with Arizona Department of Health Services ("ADHS"), Bureau of Emergency Medical Services & Trauma Systems ("BEMSTS" or the "Bureau") to provide Advanced Life Support ("ALS") and Basic Life Support, ("BLS") interfacility transports and convalescent transport ambulance services in Maricopa County, Arizona (the "Application").

2. Community Ambulance's proposed service area is Maricopa County and overlaps with the service areas of Intervenors AMR (CON 136); ABC Ambulance, LLC ("ABC") (CON 139); and Maricopa Ambulance, LLC ("MA") (CON 146). AMR CON Holders and Maricopa Ambulance provide 911 emergency transports, as well as interfacility and convalescent transports under their CONs. ABC is authorized under its CON to provide interfacility and convalescent transports only.

3. The intervening CON Holders, Maricopa Ambulance, AMR, and ABC are privately owned, for-profit companies.

4. The proposed service area also overlaps with the service areas of the following public providers in Maricopa County:

Black Canyon Fire Department (CON 121)
Buckeye Valley Volunteer Rescue Unit (CON 8)
Daisy Mountain Fire District (CON 105)
Gila Bend Rescue-Ambulance (CON 78)
Gilbert Fire and Rescue Department (CON 149)
Mesa Fire & Medical Department (CON 140)
North County Fire & Medical District (CON 114)
Peoria Fire and Medical Department (CON 146)

Phoenix Fire Department (CON 76)

Queen Creek Fire and Medical Department (CON 144)

Rio Verde Fire District (CON 143)

Sun City Fire and Medical Department (CON 145)

Sun Lakes Fire District (CON 12)

Superstition Fire & Medical District (CON 137)

Surprise Fire-Medical Department (CON 141)

Tempe Fire Medical Rescue (CON 148)

5. Although some of these public entity CON holders have the authority to provide interfacility transports, none of these public entities intervened in this hearing.

6. The Fire Chiefs from Phoenix Fire, Chandler Fire, Tempe Fire, Mesa Fire, Avondale Fire, and Daisy Mountain Fire all submitted letters of support to ADHS in support of Community Ambulance's Application to provide interfacility and convalescent transports in Maricopa County. ADHS also received letters of support for Community Ambulance's Application from the Mayor of Gilbert and from Arizona General Hospital.

7. There was no evidence presented that any public entities with interfacility transport authority are willing to provide the transports set forth in the Application, enter into preferred provider agreements with healthcare systems, or have the ability to provide interfacility transports throughout Maricopa County because the service areas of these public entities generally correspond to their municipal or district boundaries.

8. According to the U.S. Census Bureau, Maricopa County is the most populous county in Arizona, with more than 4.3 million residents as of 2017, and is one of the fastest growing counties in the United States.

9. Linda Hunt, Chief Executive Officer of Dignity Health – Arizona ("Hunt"), testified that Maricopa County is growing at a cumulative rate of 2-3% per year.

According to Hunt, much of that growth is occurring in the northwest and southeast portions of Maricopa County.

10. A large segment of the patient population in Maricopa County will require more acute care as the average age continues to rise.

11. The total number of annual ambulance transports done in Maricopa County has increased every year since 2013, and in 2017 there were more than 320,000 calls for ambulance transport in Maricopa County.

12. There are thousands of public and private health care facilities within the boundaries of Maricopa County.

13. Dignity Health, a California nonprofit public benefit corporation, which owns and operates a healthcare system in the State of Arizona, among other states ("Dignity Health"), owns and/or operates 74 total health care facilities in Maricopa County, including the following hospitals located in Maricopa County: St. Joseph's Hospital and Medical Center ("St. Joe's"), St. Joseph's Westgate Medical Center ("Westgate"), Chandler Regional Medical Center ("CRMC"), Mercy Gilbert Medical Center ("MGMC"), Arizona General Hospital ("AGH"), Arizona Specialty Hospital, OASIS Hospital, and is a minority owner of Phoenix Children's Hospital ("PCH"). In addition to hospitals, Dignity Health owns and operates the following 3 urgent care facilities located in Maricopa County: Dignity Health Urgent Care in Ahwatukee ("Ahwatukee Urgent Care"), Dignity Health Urgent Care in Gilbert ("Gilbert Urgent Care"), Dignity Health Urgent Care in Queen Creek, and 10 freestanding emergency rooms.

14. To accommodate the continued growth in Maricopa County, Dignity Health plans to build and open several additional facilities, including a 50 bed Arizona General Hospital in Mesa, a tower at CRMC, and two new freestanding emergency rooms in Tempe and Surprise. Dignity Health also provided evidence that it has plans to build facilities in the West Valley, west of State Route 303.

1 15. Banner Health, Tenet (Abrazo), Steward Health, HonorHealth and
2 Phoenix Children's Hospital are also expanding to meet the needs of the growing
3 population.

4 **COMMUNITY AMBULANCE'S APPLICATION AND AMENDMENT**

5 16. Community Ambulance is a for-profit limited liability company.
6 Community Ambulance is co-owned by Ambulance Management Group, LLC, a
7 Nevada limited liability company ("AMG") and Dignity Health. AMG owns a 49.9%
8 membership interest in Community Ambulance. Dignity Health owns a 50.1%
9 membership interest in Community Ambulance.

10 17. Community Ambulance is registered to do business in the State of
11 Nevada as RBR Management, LLC and is registered to do business in Arizona under
12 the fictious name Community Ambulance, LLC. Community Ambulance was required
13 to register to do business in the State of Arizona under a fictious name because RBR
14 Management, LLC is an existing, unrelated, Arizona limited liability company.

15 18. Community Ambulance expects to perform 11,315 interfacility
16 transports in its first full year of operations.

17 19. Health care providers and systems, like Dignity Health, are significant
18 consumers of interfacility transports and have clear insight into their ambulance
19 transportation needs and how the interfacility system is performing.

20 20. Community Ambulance intends to provide an integrated ambulance
21 solution for Dignity Health that includes, but is not limited to, IT compatibility, accurate
22 performance reporting, posting at Dignity Health locations, and employee and staff
23 training in Dignity Health's "Hello humankindness" initiative.

24 21. During the Bureau's administrative review of Community Ambulance's
25 Application, the Bureau determined administrative completeness under A.A.C. R9-25-
26 902. If information was missing from the Application, the Bureau notified Community
27 Ambulance, which was required to respond to the requests for information if it wanted
28

the application to proceed. During the Bureau's substantive review, Community Ambulance also answered all of the Bureau's questions.

22. Community Ambulance has a base hospital agreement with St. Joe's. If a CON is awarded, AMG expects to hire and pay the salary for Dr. Ann Burns as the Medical Director for Community Ambulance's operations in Maricopa County. Dr. Burns is an emergency room physician at St. Joe's and Westgate, and is currently Chairman and Medical Director of the St. Joe's Emergency Department and Medical Director of Westgate's Emergency Department.

23. Community Ambulance's day-to-day operations will be led by Robert Richardson ("Richardson") and Brian Rogers ("Rogers"), both of whom are certified paramedics with extensive experience in the provision and operation of ambulance services.

24. Community Ambulance prepared and submitted an Operations Plan [CA-149], which outlines its feasible start-up plans for Community Ambulance's operations in Maricopa County if awarded a CON and identifies the owners, executives, management, and on-site start-up team.

25. Community Ambulance expects to locate sub-operation stations at Westgate, St. Joe's, CRMC, and MGMC. The cost of leasing these sub-operation stations was included in Community Ambulance's Revenue and Cost Report ("ARCR") and revised ARCR.

26. Community Ambulance has proposed six (6) total ambulances, with five (5) available to be in service at any given time. Community Ambulance's hours of operation are 24 hours per day, 7 days per week.

27. Community Ambulance analyzed and mapped how far vehicles could travel in 30 minutes from each sub-operation station during peak traffic times and determined that Community Ambulance's crews could reasonably respond to the Dignity Health facilities in Maricopa County within 30 minutes at least 90% of the time.

28. Although Community Ambulance did not include interfacility arrival times in its Application, Community Ambulance testified at hearing that it would agree to interfacility arrival time standards if awarded a CON.

29. Through its revised ARCR, Community Ambulance requested to be part of the Phoenix Uniform Rate Group. The issue of rates was deferred to the hearing for purposes of establishing that allowing Community Ambulance to utilize those rates would be just, reasonable, and sufficient.

30. AMR and Maricopa Ambulance belong to the Phoenix Uniform Rate Group.

31. Community Ambulance's revised ARCR with the Phoenix Uniform Rate Group rates projected a first-year net income of more than $700,000.

32. According to Community Ambulance's analysis and testimony at the hearing, Community Ambulance's revised ARCR contained some errors that were addressed and corrected during testimony. The impact of those errors does not bring into question the ongoing viability of Community Ambulance's proposed operations in Maricopa County. After correcting for these errors, Community Ambulance's projected first-year net income is still $596,924.

PUBLIC NECESSITY FOR AN INITIAL CON FOR COMMUNITY AMBULANCE

The Existence of Ground Ambulance Service to all or Part of Maricopa County

33. As noted above, Community Ambulance's service area is covered by other CON Holders, including Intervenors as well as public fire departments and fire districts. Witnesses testified to the benefits of another interfacility transport provider to the system.

34. AMR of Maricopa and Professional Medical Transport ("PMT") (both AMR affiliates) are the only CON holders that can provide interfacility transports throughout all of Maricopa County. All other CON Holders, including the remaining AMR CON Holders, ABC, and Maricopa Ambulance, and the public CON holders

identified above in paragraph 4 have geographic restrictions that limit their ability to provide transports throughout Maricopa County.

35. The AMR CON Holders in Maricopa County, other than AMR of Maricopa and PMT are restricted from the Buckeye Valley Fire District, North County Fire and Medical, Daisy Mountain Fire District, and Sun Lakes Fire District.

36. ABC has both geographic and operational restrictions on its CON that (1) restricts its ability to respond to calls in the Buckeye Valley Rural Volunteer Fire District, Sun City West, with the exception of the campus of Banner Del Webb Medical Center, the service areas of Life Line Ambulance Service Inc. (CON 62) and R/M Arizona Holdings, Inc. (CON 58) and (2) limits the number of ambulances that ABC may have in operation. ABC has the authority to run a maximum of twenty ambulances. Currently, ABC has fourteen ambulances in operation.

37. Maricopa Ambulance has geographic restrictions that limit its ability to provide transports in the Buckeye Valley Fire District, North County Fire and Medical, Daisy Mountain Fire District, and Sun Lakes Fire District. Maricopa Ambulance is also restricted from the service area of Life Line Ambulance Service Inc. (CON 62) and Superstition Fire and Medical District (CON 137).

38. Maricopa Ambulance does not currently have a strong presence in the East Valley of Maricopa County where there are a number of healthcare facilities, including Dignity Health facilities.

39. None of the municipalities or fire districts with overlapping CONs intervened in the hearing on Community Ambulance's Application or requested that their CON service area be excluded from Community Ambulance's proposed service area.

Financial Impact on Other CON Holders

40. In 2017, there were over 320,000 calls for ambulance service in Maricopa County. AMR handled more than 210,000 of those calls.

41. Community Ambulance's 11,315 transports is approximately 5% of the total calls handled by AMR in 2017.

42. Dignity Health has been dissatisfied with AMR's level of service and alleged failure to honor its contractual commitments under the November 2015 Customer Agreement (amended February 21, 2017), a preferred provider agreement between Dignity Health and AMR. AMR of Maricopa and PMT were both providers under the now-terminated Customer Agreement.

43. AMR terminated the Customer Agreement in 2017 but continues to provide interfacility ambulance transports for Dignity Health.

44. AMR's lost several thousand Dignity Health transports to Maricopa Ambulance, in part, due to Dignity Health's dissatisfaction with AMR's service, collaboration, reporting, and willingness to breach the Customer Agreement.

45. ADHS issued Maricopa Ambulance's CON on or about July 2016.

46. In or around August 22, 2018, Dignity Health and Maricopa Ambulance entered an Amended and Restated Medical Transportation Service Agreement (the "MTSA").

47. The MTSA is not a preferred provider agreement and expressly states there is no right of first refusal conferred on Maricopa Ambulance through the MTSA.

48. The MTSA is expected to provide Maricopa Ambulance with approximately 3,600 interfacility transports on an annualized basis.

49. Before entering the MTSA, Maricopa Ambulance provided very few interfacility transports for the Dignity Health system.

50. Maricopa Ambulance has known about Dignity Health's efforts to develop its own ambulance solution with Community Ambulance since 2016 and

moved to intervene in this matter on or about June 14, 2017. Maricopa Ambulance entered the MTSA with full knowledge of Community Ambulance's Application. Maricopa Ambulance understood that it could lose a majority of those transports if Community Ambulance was awarded a CON.

51. Maricopa Ambulance did not prepare a financial impact analysis on the transports identified in the Application or the 3,600 (annualized) transports that it currently provides to Dignity Health.

52. Priority Ambulance CEO, Bryan Gibson ("Gibson"), testified that Maricopa Ambulance is showing significant growth even without the addition of the 3,600 (annualized) Dignity Health transports.

53. Since receiving its CON, Maricopa Ambulance has shown significant growth by adding over 30,000 additional transports to its ambulance service through 911 contracts with the City of Scottsdale, the City of Surprise, the City of Glendale, and through a preferred provider agreement with the HonorHealth system.

54. ABC received its CON on or about March 30, 2016.

55. Through a February 12, 2018 letter to the Bureau requesting an adjustment in general public rates, ABC reported to the Bureau that it has "experienced steady growth, and during 2017, saw its operations grow significantly with increased transport activity, increased headcount, and a move to a new headquarters facility to accommodate its need."

56. The number of reported transports for ABC in 2017 grew by approximately 70% over 2016 (4,735 transports in 2016 compared to 8,067 transports in 2017) and ABC projected another 38.1% increase in its 2018 transports to 11,140 transports.

57. In 2017 and 2018, ABC provided only four (4) Dignity Health transports, all of which were turned to ABC by AMR.

58. As of the hearing, ABC had not actively marketed its transportation services to Dignity Health facilities or affiliates over which Dignity Health has the ability to direct the use of ambulance services.

59. ABC submitted a financial impact analysis premised on the loss of transports it provides for behavioral health patients insured under Mercy Care Plan or patients within the Arizona Care Network ("ACN").

60. The ACN is a physician-led, physician governed clinically integrated network.

61. The governing body overseeing the ACN is independent from Dignity Health and Dignity Health has no power to direct or control which ambulance service providers the participants in the ACN utilize for transport services.

62. On November 8, 2018, David Hanekom, MD, FACP, CMPE, and CEO of the ACN wrote a letter to Adrian Hofmeyr, counsel for ABC, explaining that ACN does not contract with ambulance services or direct facilities to use any particular ambulance company.[1]

63. Mercy Care Plan (which now includes Mercy Maricopa Integrated Care) is a Medicaid plan that oversees approximately 360,000 members and is a joint venture between Dignity Health and Ascension Health. Mercy Care Plan is administered and managed on a day-to-day basis by Aetna.

64. Dignity Health has no authority to require a payor like Mercy Care Plan to use any one ambulance service because the health care providers and facilities (most of which are not affiliated with Dignity Health) rather than the payors (like Mercy Care Plan) request ambulance transports.

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[1] Dr. Hanekom's letter to counsel for ABC was not introduced or admitted as an exhibit during the hearing in this matter as it was received by counsel for ABC on or after November 8, 2018. Applicant submitted Dr. Hanekom's letter as an exhibit, identified as CA-241, with its written closing argument for inclusion in the record. Dr. Hanekom's letter is hereby admitted to record.

The Need for Additional Interfacility or Convalescent Transport

65. ADHS received letters of support submitted in favor of Community Ambulance's Application from Fire Chief Thomas Dwiggins of Chandler Fire, Fire Chief Greg Ruiz of Tempe Fire, Fire Chief Mary Cameli of Mesa Fire and Medical Department, Fire Chief Paul Adams of Avondale Fire, Fire Chief Kara Kalkbrenner of Phoenix Fire Department, Fire Chief Mark Nichols of Daisy Mountain Fire District, Mayor Jenn Daniels of the Town of Gilbert, and the former CEO of Arizona General Hospital ("Letters of Support").

66. Phoenix Fire Chief Kalkbrenner, through her March 5, 2018 letter of support, told BEMSTS that the Phoenix Fire Department – the largest fire department in the State of Arizona – has observed a need for additional non-emergency ambulance transportation, especially when the current providers are overtaxed or providing extended response times to the numerous facilities within Phoenix city limits.

67. City of Chandler Fire Chief, Thomas Dwiggins, told BEMSTS, in part, that the Chandler Fire Department is "confident that this application is in the best interest of all citizens of Maricopa County. By granting this CON application, interfacility transportation services will be enhanced for all with the addition of more available ambulances to serve the needs of all levels of inter-facility patient care."

68. Mayor Jenn Daniels through her Letter of Support stated that "Market diversity and competition in healthcare delivery services further work to the benefit of our citizens."

69. Bob Honeycutt, the former President and Chief Executive Officer of Arizona General Hospital, through this September 14, 2017 support letter, provided BEMSTS with his view from a hospital system's perspective that "Arizona General Hospital has been challenged by an unmet need for additional non-emergency ambulance transportation…[t]o the point where Arizona General Hospital has itself had to call 911 to have fire department resources respond to our facility.

70. Before Community Ambulance filed its Application, Dignity Health put out an RFI and ultimately contracted with AMR under an ADHS-approved preferred Customer Agreement (the "Customer Agreement"), as amended on February 21, 2017.

71. The Customer Agreement was executed on or about November 1, 2015. At that time, AMR was the only plausible option available to Dignity Health to be a preferred provider of interfacility ambulance transport in Maricopa County.

72. Preferred provider contracts, as Dr. David Argue testified, are an important tool hospitals use for ambulance service.

73. Preferred provider agreements assure the ambulance provider of some level of volume that allows the provider to appropriately budget and allocate resources.

74. A preferred provider agreement motivates the ambulance company to dedicate resources to serve a healthcare provider or hospital system because it has assurances of certain transport volumes the ambulance company can count on.

75. Preferred provider agreements also limit overinvestments by other ambulance companies in the service area because those companies know that the majority of a hospital system transports are subject to preferred provider agreement.

76. Through the Customer Agreement, Dignity Health attempted to accomplish its goals of an integrated interfacility ambulance service for its healthcare system. Through the Customer Agreement, AMR agreed to, among other things,

a. arrival time standards for urgent, nonurgent, and scheduled ambulance services.

b. maintain a telephone triage dispatch infrastructure at a dispatch center and provide dispatch services, including "prioritization of calls, rendering of pre-arrival instructions, and coordination of

alternative transport providers in the event [AMR] is unavailable to transport within the timeframe specified."

c. provide a dedicated "One-Call" customer service line, through which Dignity Health employees could contact "a single resource to arrange for all medical transportation needs regardless of who supplies the service."

d. brand two (2) ambulances for Dignity Health and post an ambulance in the East Valley near CRMC or MGMC and post an ambulance in the Downtown, Central Valley and West Valley section of Maricopa County at or near St. Joe's or Westgate.

e. provide arrival time performance reports on a quarterly basis, and was contemplated to include information from subcontractors providing services under the Customer Agreement, and establish a Quality Steering Committee to review system performance in all key areas, generating ideas for improvement projects, and guiding and monitoring progress on improvement projects.

f. not interfere with Dignity Health's efforts to engage any other person or entity for the provision of some or all of the ambulance services, and to not initiate legal action or take any other action to challenge the right of Dignity Health to enter into a services agreement with another organization, or to develop its own capability or authority to provide ambulance services to its patients.

77. The AMR CON holders filed a Motion for Intervening Party Status in this proceeding on June 14, 2017. Following AMR's Motion for Intervening Party Status, AMR terminated the Customer Agreement, and Dignity Health initiated litigation against AMR arising out of AMR's intervention in this CON proceeding.

78. On February 16, 2018, AMR, ABC, and Maricopa Ambulance were granted intervening party status.

79. Dignity Health was dissatisfied with AMR's performance under the Customer Agreement.

80. Dignity Health witnesses testified that AMR did not honor its contractual commitments to, among other things, provide transparent, timely, and accurate transport data reporting, turn calls to other providers when AMR transports could not timely respond, and not to interfere with Dignity Health's efforts to develop an ambulance service in Maricopa County.

81. Dignity Health witnesses also testified about issues with delays in transports, AMR crews, and inappropriate utilization of 911 emergency ambulance service for urgent interfacility transports.

82. Dignity Health witnesses testified that these issues with AMR persisted after termination of the Customer Agreement.

83. Brandon Hestand, RN ("Hestand") is a paramedic liaison for CRMC and MGMC, who works directly with ambulance companies, fire departments, and first responders to improve patient care in the ambulance transport space and address any issues that may arise with respect to private ambulance companies including patient care, transfers issues and delays.

84. Hestand testified that delays in transports are a common – sometimes daily – issue Hestand deals with as a liaison.

85. Hestand testified that a Dignity Health patient had to be transported eight (8) miles by air ambulance, rather than by ambulance transport, because the ambulance AMR dispatched to MGMC did not have the proper equipment on board.

86. Hestand also testified about delays in patient care when an AMR unit was diverted from an interfacility call to a 911 emergency call, and the replacement unit AMR dispatched did not have an IV pump.

87. Hestand further testified about a July 31, 2017 email he sent to Allison Skinner of AMR to address the transfer of cardiac patients by air ambulance because the staff of an otherwise available ground ambulance unit was not trained on balloon pumps and Impella heart pumps.

88. Hestand testified about a March 31, 2018 email from a unit secretary and patient care tech for the emergency room at MGMC, Nicole Berg, about another significant delay in transporting an urgent patient on a vent and drip because AMR dispatched an ambulance that was not equipped to care for that patient.

89. Hestand further testified about an August 16, 2017 email to Paul Cloward and Alison Skinner about a significant delay caused by an interfacility unit being pulled into the 911 system.

90. Although Hestand was concerned that an interfacility transport would be pulled into 911 emergency traffic, AMR representative Doug Jones testified that interfacility transports serve as back-up to “some of our 911 systems.”

91. AMR and Maricopa Ambulance, the two largest ambulance providers in Maricopa County, provide 911 service to various municipalities in Maricopa County.

92. These 911 contracts, like the recent City of Scottsdale contract awarded to Maricopa Ambulance, often require that there be dedicated ambulances to the particular municipality and that those ambulances cannot be used for interfacility transports. Some 911 contracts allow those ambulances to provide interfacility transports, but require that those ambulances remain within the municipal or fire district boundaries.

93. As Doug Jones testified, interfacility ambulances are pulled away from interfacility calls to respond to 911 emergency calls.

94. CON holders with interfacility transport authority use their interfacility ambulances as back-up for 911 emergency responses.

95. Richardson and Rogers testified that Community Ambulance's six (6) ambulances will be uniformly equipped with, among other things, IV pumps, ventilators, heart monitors, and climate-controlled drug boxes so that equipment issues are minimized.

96. As a dedicated interfacility and convalescent transport provider, Community Ambulance will not be pulled into the 911 emergency system.

97. Hestand and Matthew Karger ("Karger"), a paramedic liaison for the AGH testified about the improper utilization and activation of the 911 system for urgent and non-urgent interfacility transports when an ETA is unacceptable to the facility.

98. Karger testified that in his liaison role for the AGH system, he fields "[a]nywhere between 5 to 10 complaints per month per facility. So if you do the math on that, on the low end, 50 to a hundred complaints [per month] regarding interfacility transports out of our facilities."

99. AMR's data shows that on at least four (4) different occasions between March 16, 2017 and January 3, 2018, AMR activated the 911 system for an interfacility transport from a "Dignity Health-ER."

100. Triggering the 911 system unnecessarily introduces additional costs and risks to the public. It costs more to send a fire engine, a crew of 4-5 firefighters and paramedics, as well as an ambulance unit to a facility than a single interfacility ambulance. Utilizing the 911 system for an interfacility transport also removes a 911 emergency crew from the 911 system to respond to an actual emergency call.

101. Karger sought clarification from ADHS about the appropriateness of dispatching 911 to AGH's freestanding ERs for urgent calls.

102. These issues arose during meetings with AMR representatives about billing issues and, in part, lengthy ETAs. Karger's concern about utilization of the 911

system for urgent patients grew out of AMR representative's position that if "you need a faster response from us, then you need to be calling 911."

103. Karger scheduled a meeting with BEMSTS for May 2018. Karger testified that representatives of BEMSTS were emphatic that "[y]ou cannot utilize the 911 system" as a licensed emergency room.

104. Karger immediately notified all AGH staff of the new policy that the 911 system was no longer to be utilized and that patients would be transferred by way of interfacility ambulances.

105. After the policy implementation, Karger met with AMR representatives Todd Jaramillo and Alex Lopez on May 24, 2018 to explain that AGH would no longer be utilizing the 911 systems and that we were expecting faster response times.

106. Despite Karger's efforts to prevent the use of 911 to AGH's freestanding emergency rooms, the practice continued. AMR activated the 911 system to a freestanding ER in the East Valley on October 22, 2018 for a non-urgent patient.

107. Karger also testified about delays in urgent and non-urgent response times, billing issues, AMR's trivialization of the relatively low number of transports from a freestanding ER in the West Valley, and issues related to the professionalism of crews.

108. Karger also testified about unsatisfactory responses from AMR during a June 20, 2018 meeting at AGH's freestanding ER location 51st Avenue and Olive, concerning extended ETAs for urgent patients.

109. Karger testified about a lengthy ETA for an urgent stabbing victim. Karger testified that upon arrival, the AMR ambulance crew told AGH staff: "Well, why didn't you call 911?"

110. He further testified that AMR's representatives during the June 20, 2018 meeting were dismissive of the issues he and facility administrator Brenda Lopez raised.

111. Karger testified that he would prefer not to use AMR at all, but that he has no choice because AMR is the only viable option for the East Valley of Maricopa County.

112. Neal Thomas, the Chief Executive Officer of ABC ("Thomas"), testified that it cannot and does not want to be the preferred interfacility provider for Dignity Health because ABC would be required to utilize its entire ambulance fleet and would be unable to cover its existing transports.

113. Thomas also testified that it will only agree to include arrival time standards in its CON if ADHS requires interfacility transport providers to include such standards in its CON.

114. Dignity Health expects that its preferred ambulance providers subject themselves to arrival time standards in their CON.

115. Maricopa Ambulance has geographic restrictions in its CON that prevent it from reaching patients throughout Maricopa County.

116. Maricopa Ambulance, through exhibits submitted during the hearing, acknowledged that it does not have a strong presence in the East Valley.

117. Maricopa Ambulance is continuing to grow at a very rapid pace, replacing AMR on a number of municipal 911 contracts and starting to take over interfacility transports that AMR previously handled – including becoming the preferred provider for HonorHealth.

118. Dignity Health is not required to piece together interfacility responses from an unintegrated mix of three different providers, including AMR, before Community Ambulance can be awarded a CON.

119. Dignity Health has a history of collaborative success with Community Ambulance in Clark County, Nevada that it desires to bring to Maricopa County.

Whether Community Ambulance Established Substandard Performance by AMR, Maricopa Ambulance, or ABC

120. Community Ambulance acknowledged that it has no evidence to establish substandard performance by ABC or Maricopa Ambulance.

121. Community Ambulance acknowledged that it has minimal evidence of potential substandard performance by AMR.

122. During the hearing, Community Ambulance attributed this lack of evidence to Intervenors refusal to produce CAD data in response to Community Ambulance subpoenas for that information.

123. Community Ambulance raised questions, however, about AMR's compliance with its urgent and nonurgent arrival time requirements under its CON based on its arrival time performance under the Dignity Health Customer Agreement.

124. The Customer Agreement defines a "non-urgent" transfer as "[p]atients with a stable condition requiring immediate transfer."

125. AMR's CON-136 similarly defines "urgent" transfers" as:

> immediate and shall mean a patient that has a high risk of his or her condition deteriorating as determined by the patient's transferring clinician. Examples of patients requiring an Urgent Transfer include patients in a stable condition: requiring advanced airway support but secured, intubated, on ventilator; patients on multiple vasoactive medication drips; patients whose condition has been initially stabilized, but has likelihood of deterioration based on assessment or knowledge of the provider regarding specific illness/injury. A patient is not stable if he or she is clinically deteriorating and is in need of a time-sensitive intervention not available at the transferring facility. Examples of patients that are not stable include patients: who require invasive monitoring; are post resuscitation; have sustained significant multi-system trauma, acute STEMI, or acute stroke; or are hemodynamically unstable.

126. Under CON 136, AMR agreed to the following arrival time compliance standards for non-urgent and urgent transfers:

> *INTER-FACILITY ARRIVAL TIMES*
>
> *A. Arrive at the facility within sixty minutes, zero seconds (60:00) of the requested arrival time on ninety (90) percent of all non-urgent transfers from an Arizona Department of Health Services licensed Hospital, Long-Term Care Facility, Behavioral Health In-patient Facility or Freestanding Urgent Care Centers as defined in A.R.S. 36401(19)*
>
> *B. Arrive at the facility within thirty minutes, zero seconds (30:00) of the requested arrival time on ninety (90) percent of all urgent transfers from an Arizona Department of Health Services licensed Hospital, Long-Term Care Facility, Behavioral Health In-patient Facility or Freestanding Urgent Care Centers as defined in A.R.S. 36401(19)*

127. AMR witnesses testified that for purposes of calculating compliance with its interfacility arrival time requirements on nonurgent calls, “within sixty minutes, zero seconds” of the agreed upon arrival time means an ambulance responding to a nonurgent call is compliant with its CON if it arrives at the facility either 60 minutes before or 60 minutes after the agreed upon arrival time.

128. AMR witnesses testified that for purposes of calculating compliance with its interfacility arrival time requirements on urgent calls, “within thirty minutes, zero seconds” of the the agreed upon arrival time means an ambulance responding to an urgent call is compliant with its CON if it arrives at the facility either 30 minutes before or 30 minutes after the agreed upon arrival time.

129. Community Ambulance testified that the term “within” for compliance with its franchise agreements in Nevada requires that an ambulance respond on or before the arrival time, but not after the arrival time.

Rates and Charges

130. Currently, the Phoenix Uniform Rate Group rates are:

ALS Base Rate: $952.81
BLS Base Rate: $848.73

Mileage:	$19.75
Waiting Charge:	$212.18

131. ADHS has approved this rate group for Intervenors Maricopa Ambulance and AMR, as well as other CON holders operating in Maricopa County, including both interfacility and 911.

132. Under its revised ARCR, Community Ambulance calculated that based on 11,315 year-one transports, the implementation of these rates would result in a projected first-year net income of more than $700,000.

133. As required by statute and regulation, ADHS reviewed the revised ARCR with the Phoenix Uniform Rate Group figures and performed its normal analysis of the financial information to produce its Second Findings Letter.

134. In its Second Findings Letter, ADHS recommended a decrease in Applicant's mileage reimbursement rate and an increase in its ALS and BLS base rates to offset the lost revenue from the lower mileage reimbursement.

135. ADHS did not have any other material changes to the revised ARCR.

136. While Applicant could operate profitably at the rates recommended by ADHS through the Second Finding Letter, it has made the voluntary decision to participate in the Phoenix Uniform Rate Group.

137. During the hearing, Intervenors suggested that there were errors in the revised ARCR submitted by Applicant, but Intervenors never established how, if at all, those issues impacted Community Ambulance's profitability in year one.

138. The first concern raised by Intervenors involved Applicant's staffing and wage model. During the hearing, representatives for Applicant testified that the staffing model would need to be flexible as they develop a complete demand analysis of the market.

139. Through its Application, Community Ambulance calculated that it would run five (5) ambulances twenty-four hours a day, seven (7) days a week. [ADHS-1]

The maximum staff that could be on those five (5) ambulances would be 40 full time equivalents.

140. To account for overtime and to maintain flexibility, Applicant reported 42 full time equivalents on its initial and revised ARCRs reporting a total staffing cost in the revised ARCR of $1,861,816.

141. After Intervenors suggested that Community Ambulance must be employing only part-time firefighters due to the lack of overtime included in the ARCR, Applicant acknowledged that it should have reported 40 full time equivalents and separately calculated training, overtime and benefits.

142. Richardson testified that Community Ambulance would hire some part-time firemen, but that Community Ambulance could also draw from a great local market as well as staff in Clark County, Nevada that have expressed a desire to work in Maricopa County.

143. Based on the staffing model Rogers testified to during the hearing and assuming a scenario where 100% of the employees are full-time, Applicant would pay each employee 1,976 straight time hours and 208 overtime hours each year.

144. Community Ambulance will provide 40 hours of training to each of its employees.

145. Total staffing cost increases by $121,315 to $1,983,131 after adjusting for overtime wages, training and benefits for 40 FTEs.

146. Based strictly on the Medicaid reimbursement rates in Arizona, ADHS recommended, and Community Ambulance adopted, an incorrect re-allocation of settlement allowances in its revised ARCR, which resulted in a Medicaid settlement allowance that was too high and a Medicare settlement allowance that was too low.

147. Aaron Sams testified "what matters most is the cumulative total, so the deduction from revenue percentage as a whole impacts how rates are changed and calculated. The individual percentages for Medicare, Medicaid, bad debt, things like

that don't individually impact it. It's how they collectively impact how we set rates and charges."

148. Through Sams' testimony, ADHS agreed that the Bureau's analysis, and therefore Applicant's revised ARCR, presents a fair expectation of Applicant's overall collection rate and financial results even though the individual settlement allowances may have been inadvertently inverted.

149. Community Ambulance did not include the contractual discount set forth in the proposed customer agreement with Dignity Health on its ARCR because the proposed agreement was not finalized until late 2017.

150. When the service agreement was finalized, Applicant inadvertently forgot to update that section of its revised ARCR to include some level of discounting under the proposed contract.

151. The discount under the service agreement only applies when Dignity Health is ultimately responsible to pay for the ambulance transport, which Jeff O'Malley testified happens only once or twice per month on average.

152. Assuming 24 transports per year that qualify for the 30% contractual discount and the average cost per transport is $1,161.61 as reflected in the revised ARCR, the total lost revenue as a result of the discount is $8,300 or approximately 1% of Applicant's pro forma calculation of its net income.

153. Intervenors claimed Applicant failed to include expenses related to stocking its ambulances with medical supplies because the original and revised ARCRs do not include any "cost of goods sold."

154. Cost of goods sold should be zero dollars ($0.00) because Community Ambulance is not charging its patients for use of medical supplies.

155. Applicant accurately reported the cost of its medical supplies on its revised ARCR at page 6 under line 25 "Ambulance Supplies – Nonchargeable."

Applicant's ARCR has accounted for the costs of medical supplies, which are costs Community Ambulance will not recoup.

156. Maricopa Ambulance had errors in its ARCR and submitted a revised ARCR during the hearing that resulted in its profitability dropping from over $1.1 million to $1,542. Maricopa Ambulance was still awarded its CON.

157. Applicant's first-year net revenue on 11,315 transports at the Phoenix Uniform Rates will be $596,924, after taking into the account the foregoing adjustments.

Other Matters

158. Community Ambulance offered the expert testimony of economist Dr. David Argue who opined that competition in a regulated ambulance market serves a public necessity.

159. At its CON hearing, Maricopa Ambulance offered similar testimony by the same expert, Dr. Argue.

160. During their respective CON hearings, ABC and AMR presented evidence and made arguments that the public benefits from competition.

161. Dr. Argue testified that healthcare systems and patients would benefit from the introduction of Community Ambulance into the market:

> the patient population isn't going to be any worse off and they could easily be better off. If a new provider comes in, provides higher level of quality, then that's going to make those patients that are served, for example, by Dignity better off by being able to get the service that Dignity promises them. It also has an effect -- kind of a halo effect or -- what is it -- a "rising tide rises all boats" effect, where if Community Ambulance is providing a higher quality of care -- I don't know whether they are or aren't, but this is a question to be considered. If they are, then that's going to put pressure on all of the other ambulance providers in the county to do the same thing, to match that. Because they will be concerned about the hospitals who should pressure them to be concerned about not meeting up to the community standard. So even if they're -- Community Ambulance is not ready to serve everyone else in the county, it can add pressure to the competitive pressure to force everyone to have higher quality services.

162. Dr. Argue testified that if a provider is not living up to the standards of its healthcare system customers, healthcare systems have other options available in the marketplace.

163. Community Ambulance acknowledges the challenges of operating and maintaining a full ambulance service in sparsely populated rural and wilderness areas and recognizes that rural CON holders need interfacility transports in order to financially supplement the costs of operating the 911 system in that rural area.

164. Community Ambulance has testified that any interfacility transports that are in a declared rural area of Maricopa County would remain with the current CON holder in that area. Community Ambulance testified that it would like to have a collaborative relationship with the existing rural area CON holder(s) to act as back-up, responding to any calls that the CON holder in the area (1) cannot respond to at all or (2) needs assistance to clear long ETA's that are impacting patient care and welfare.

165. Based on the system status management plan and testimony of AMR's own system status management witnesses, Community Ambulance will be able to cover the service area and respond to 11,315 transports in year one with the proposed 6 ambulances, five of which are operating 24 hours per day 7 days per week.

166. Rogers, the Chief Operating Officer of Community Ambulance, testified that within 20 weeks of beginning operations, Community Ambulance will have a demand analysis that allows Community Ambulance to adjust its operations appropriately to provide high-quality, cost-efficient, and timely interfacility service for the 11,315 interfacility transports set forth in its Application.

167. Rogers and Doug Jones, the system status management experts for Community Ambulance and AMR respectively, testified that hospital systems most of

the time do not maintain sufficient data for an ambulance company to develop a demand analysis or system status plan.

168. Brian Rogers will prepare the demand analysis and system status management plans for Community Ambulance's operations in Maricopa County. Rogers, Doug Jones and Brian Gibson each testified they would need 20 weeks of data to develop an initial demand analysis.

169. Community Ambulance is already using ePCR technology for its current operations and will continue to do so if awarded a CON. Community Ambulance is presently working with Dignity Health to transform the traditional paper patient care records (i.e. the "packet") to an electronic record that is sent to the ePCR.

170. Community Ambulance has indicated that it will submit its ePCR data to the AZ-PIERS system if it is awarded a CON.

171. Community Ambulance established that it intends to satisfy all requirements to participate in the Premier EMS Agency Program.

172. Community Ambulance has committed to fully participate in the Bureau's quality improvement initiatives.

173. Community Ambulance has committed to have at least one manager attend and participate in Arizona Emergency Medical Services Council, Arizona's Central Regional Council and the Arizona Ambulance Association. In fact, representatives from Community Ambulance are already attending the Arizona Ambulance Association meetings and the DHS quarterly meetings.

Documents required by A.R.S. § 36-2233(A) and AAC R9-25-902.

174. Community Ambulance provided this Court and ADHS with all of the information and required by A.R.S. § 36-2233(A) and AAC R9-25-902

WHETHER COMMUNITY AMBULANCE IS FIT AND PROPER TO BE ISSUED A CON

Experience and Integrity

175. Under the terms of the Operating Agreement for RBR Management, LLC dba Community Ambulance, AMG has the authority to control the day-to-day operations of Community Ambulance.

176. Richardson and Rogers, the owners and operators of AMG, have nearly 70 years of combined experience in the industry.

177. Community Ambulance and Dignity Health both contribute and invest time, money, and effort into their communities. Community Ambulance is active in supporting the community in Clark County, Nevada. In fact, the public-school system in Clark County has recognized Community Ambulance for its contributions.

178. Dignity Health is committed to providing high-quality, affordable healthcare to the communities it serves, advocating for those who are poor and disenfranchised, and partnering with others in the community to improve quality of life. Hunt testified about Dignity Health's community outreach and investment in underserved communities. For fiscal year 2018, Dignity Health gave "$2.1 billion in free care in the community benefit" and is committed to the service of the underprivileged and underserved across the communities it serves through various programs, including collecting excess food from local farms to provide to senior citizens in need, proving funding to at-risk communities, and providing approximately 5,000 new units of housing for the homeless.

179. Richardson and Rogers have been nationally recognized for Community Ambulance's service to the community as well as their own individual service.

180. Richardson and Rogers have been certified and instructed in various aspects of Emergency Medical Services, including Basic Life Support, Advanced Cardiac Life Support, Pediatric Advanced Life Support, and Pre-Hospital Trauma Life

Support, served on the American Heart Association's affiliate faculty, and Rogers continues to serve as an instructor.

181. Richardson, Rogers, and Community Ambulance's paramedics and EMTs were recognized locally and nationally for their efforts during the harrowing and tragic mass-casualty event on October 1, 2017 at the Route 91 Festival in Las Vegas.

182. Rogers has been asked by the United States Department of Health and Human Services ("HHS") to work with HHS and Federal Emergency Management Agency ("FEMA") to develop a mass-casualty response training program to learn from his and others experience in responding to such an event.

183. Community Ambulance's service in Nevada is accredited by the Commission on Accreditation of Ambulance Service ("CAAS") and plans to have its Maricopa County operations accredited by CAAS if awarded a CON.

184. Neither Richardson nor Rogers have ever been convicted of a felony or misdemeanor involving moral turpitude, neither has had a license or CON to operate an ambulance service revoked, and neither has operated an ambulance service without a proper license.

Fiscal Competency and Resources

185. Community Ambulance maintains between $500,000 and $700,000 in operating cash from its Nevada operations and has approximately $1.7 million in available capital lines from which to draw for its contemplated Maricopa County operations.

186. Dignity Health, Community Ambulance's majority owner, is a $15 billion company and the fifth largest health care system in the United States.

187. Dignity Health currently has approximately $1.6 billion dollars invested in 110 different collaborative partnerships, like Community Ambulance, throughout its system.

188. There are mechanisms in place under Community Ambulance's Operating Agreement for its members (AMG and Dignity Health) to contribute capital to Community Ambulance to ensure a successful start-up of operations in Maricopa County.

189. Hunt testified that she has the independent authority to authorize Dignity Health to contribute up to $1 million to Community Ambulance's operations.

190. In total, Community Ambulance will have immediate access to over $3,200,0000 to support its start-up operations, with access to more if required. This is more than sufficient capital to support Community Ambulance's Maricopa County operations during the first months before reimbursements from Medicare, Medicaid, and third-party payors are received.

CONCLUSIONS OF LAW

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

2. Community Ambulance bears the burden to prove by a preponderance of the evidence that the Director of ADHS should grant the proposed CON. A.A.C. R2-19-119.

3. Intervenors ABC, AMR, and Maricopa Ambulance bear the burden to establish by a preponderance of the evidence their affirmative defenses.

4. "A preponderance of the evidence is the greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other." Black's Law Dictionary (10th ed. 2014).

5. The Director and ADHS have jurisdiction over ground ambulance services under Arizona Revised Statutes Title 36, Chapter 21.1, Article 2 and A.A.C. Title 9, Chapter 25, Articles 9-11. The Director of ADHS has jurisdiction to grant or deny Community Ambulance's application for a CON. A.R.S. § 36-2233.

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

7. In addition to the statutory framework, ADHS adopted rules to regulate ambulance and ambulance services. A.A.C. R9-25-901 through R9-25-1201.

8. Any entity desiring to operate an ambulance service in the State of Arizona may do so only after being granted a CON by ADHS. A.R.S. § 36-2233.

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

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

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

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

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

11. The current regulatory environment under ADHS replaced the outdated Arizona Corporation Commission concept of "unmet need" with the concepts of public necessity and the public's best interest. The concept of considering a current provider's right of first refusal under the "unmet need" regulatory environment has been abandoned under the current regulatory model.

12. The current regulatory model is governed by concepts of "public necessity" and the "public's best interest," rather than any over-riding concern about protecting the service areas of incumbent CON holders. The focus is on public health and safety and the determination of public necessity is based on numerous factors which examines whether the public's best interests are served with respect to the provision of ambulance services. *See* Guidance Document, GC-099-PHS-EMS: Certificates of Necessity for Ambulance Service [ADHS 15].

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

14. In determining public necessity for an initial CON to issue to more than one ground ambulance service for convalescent transports or interfacility transports

for the same service area or overlapping service area, the Director considers the following factors:

R9-25-903(A)(2): The population demographics within the proposed service area.

R9-25-903(A)(3): The geographic distribution of health care institutions within and surrounding the service area.

R9-25-903(A)(4): Whether issuing a certificate of necessity to more than one ambulance service within the same service area is in the public's best interest, based on:

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

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

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

R9-25-903(A)(5): The information at 9-25-902(A)(1) & (A)(2); and

R9-25-903(A)(6): Other matters determined by the Director or the applicant to be relevant to the determination of public necessity.

R9-25-903(B)(2): The financial impact on certificate holders whose service area includes all or part of the service area in the requested certificate of necessity.

R9-25-903(B)(3): The need for additional convalescent transports or interfacility transports.

R9-25-903(B)(4): Whether a certificate holder for the service area has demonstrated substandard performance.

15. The failure to provide information on any one the foregoing factors identified in this rule does not, by itself, constitute grounds to deny the application. A.A.C. R9-25-903.

16. Further guidance on public necessity can be found in Guidance Document GC-099-PHS-EMS. The concept of public necessity recognizes that the primary focus of the inquiry should be on the best interests of the public and not upon protecting the territory or property rights of current providers in the area, through the impact on the current providers of service is one of the factors to be considered. *See* Guidance Document GC-099-PHS-EMS*; e.g.,* A.R.S. § 36-2236(A).

17. According to the Guidance Document, information to be considered includes:

- A plan for a robust, on-going benchmarking and performance improvement process that encompasses all components of the EMS system from emergency medical dispatch through emergency department arrival;
- A plan to collect and submit electronic patient care reports consistent with BEMSTS guidelines;
- A plan to adopt clinical guidelines and operating procedures for time sensitive illness consistent with best practice guidelines;
- A plan to initiate guideline-based pre-arrival instructions for all callers accessing 9-1-1 for assistance;
- Evidence of regular attendance and participation in meetings of the regional and State EMS Councils;
- A plan to ensure that ambulance service will be maintained and improved for rural communities; and
- Assurance that the service model will be cost effective and not result in higher ambulance rates.

18. Fit and proper means "that the director determines that an application for a certificate of necessity or a certificate holder has the expertise, integrity, fiscal competence, and resources to provide ambulance service in the service area.'' A.R.S. § 36-2201(21).

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

20. "If all ambulance services that have been granted authority to operate within the same service area or that have overlapping certificates of necessity apply for uniform rates and charges, the director may establish uniform rates and charges for the service area." A.R.S. § 36-2232(E).

21. A.R.S. § 36-2234(E) and A.R.S. § 36-2239(A) authorize a CON holder to apply for automatic rate increases annually. These rate increases are separate and apart from any general rate increases that CON holders may request.

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

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

24. A.R.S. § 2235(B) provides that on the expiration of the one-year term of an initial CON, the Director of ADHS may review whether the CON holder has complied with the terms of the CON.

Hearing Issues

25. Pursuant to the June 1, 2017 Notice of Hearing, the following issues were established, and based upon Community Ambulance's Application packet, as amended, the exhibits admitted during the course of the hearing and submitted on the record post-hearing, the testimony of witnesses, the issues were considered as follows:

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

The Population and Demographics of Maricopa County, the Geographic Distribution of Health Care Institutions, and the Existence of Ground Ambulance Service to all or Part of the Service Area.

26. Community Ambulance established that Maricopa County is the largest county in Arizona in terms of population.

27. Community Ambulance further established that Maricopa County is a relatively large geographical area that contains numerous municipalities and wide-spread existing health care facilities, including hospitals, urgent cares, freestanding emergency rooms, nursing homes, and residential care facilities. Community Ambulance further established that a number of large health care systems are currently building and plan to build additional and new health care facilities throughout Maricopa County in the near term.

28. The evidence established that AMR CON Holders provide the majority of emergency, interfacility and convalescent transports in Maricopa County.

29. The evidence established that Dignity Health is dissatisfied with AMR's performance.

30. The evidence at the hearing is undisputed that HonorHealth has elected to use Maricopa Ambulance as its preferred provider rather than AMR.

31. The evidence at the hearing further established that several municipalities have decided not to continue with AMR for the provision of emergency medical services in their municipalities.

32. The market for ambulance transport in Maricopa County is large enough to sustain multiple providers.

33. Although there are numerous public CON holders in Maricopa County, most only provide emergency transports or are limited to the geographic boundaries of their districts or municipalities. In addition, large areas of Maricopa County are not served by a public provider and must rely on a private provider.

34. Community Ambulance further established that ABC, Maricopa Ambulance, and the AMR CON holders (other than CONs 136 & 71) have limitations on their respective CONs that prevent them from providing service to Dignity Health patients and facilities throughout all of Maricopa County

Financial Impact on AMR, Maricopa Ambulance, and ABC.

35. Statutes and regulations do not require that existing CON holders remain whole and suffer no adverse financial impact, which would necessarily occur at some level. Rather, an adverse financial impact is one factor to be considered.

36. Community Ambulance's projected 11,315 transports is a small percentage of the more than 320,000 annual calls for ambulance service in Maricopa County.

37. Based on the evidence presented at hearing, the Director's grant of a CON to Community Ambulance may have a slight adverse financial impact on Intervenors AMR and Maricopa Ambulance and no material adverse impact on ABC.

38. The evidence established that Community Ambulance's projected 11,315 transports is, at most, 5% of the total transports AMR performed in 2017.

39. Community Ambulance further established that AMR terminated its preferred provider agreement with Dignity Health and has lost a few thousand

transports in the Dignity Health system due to competition with Maricopa Ambulance and issues, complaints, and concerns Dignity Health has with AMR's service.

40. Community Ambulance further established that despite these service issues, AMR will continue to provide some interfacility ambulance transport services to Dignity Health even with the entry of Community Ambulance into the market.

41. Maricopa Ambulance did not present evidence of the adverse financial impact it would suffer if Community Ambulance is granted a CON.

42. Community Ambulance established by a preponderance of the evidence that Maricopa Ambulance has demonstrated significant growth since receiving its CON, even with very few Dignity Health transports. The evidence demonstrated that Maricopa Ambulance has added over 30,000 additional transports to its ambulance service through 911 contracts with the City of Scottsdale, the City of Surprise, the City of Glendale, and through a preferred provider agreement with the HonorHealth system.

43. Community Ambulance established that ABC had, at most, four (4) interfacility transports for Dignity Health, which were turned to ABC from AMR.

44. Community Ambulance established that ABC, without Dignity Health transports, has experienced growth in the number of ambulance transports it provides under its CON.

45. ABC presented no competent evidence that Dignity Health has the authority to require the ACN or Mercy Care Plan to use any one ambulance service. ABC presented no competent evidence that granting Community Ambulance a CON will cause ABC to lose any transports it currently provides to patients within the ACN or who are insured under Mercy Care Plan.

46. Community Ambulance established by a preponderance of the evidence that Dignity Health has no authority to direct or require the ACN or Mercy Care Plan to use any one ambulance service.

47. Community Ambulance established by a preponderance of the evidence the Director's grant of a CON to Community Ambulance will not drive any of the current providers out of business.

48. Protecting a current provider's monopoly is not a determinative or even a substantial factor under the current regulatory model.

The Need for Additional Interfacility or convalescent transports

49. The uncontroverted Letters of Support received from various fire chiefs, political leaders, and the former CEO of AGH are credible and support the need for additional interfacility ambulance service in Maricopa County.

50. Although AMR downplayed the service issues raised by Dignity Health witnesses as not systemic, the evidence presented by the Dignity Health witnesses was credible and raised serious concerns with the levels of service AMR provided Dignity Health facilities under the terms of the preferred provider Customer Agreement and after that agreement terminated.

51. Community Ambulance established that the types of delays caused by pulling interfacility transports into the 911 system will not occur because as an exclusive provider of interfacility transports, Community Ambulance will not be pulled into 911 emergency traffic.

52. Community Ambulance has established by a preponderance of the evidence that the public will benefit from an additional provider of interfacility transports that will not be pulled into 911 emergency service system.

53. Community Ambulance established that its six (6) ambulances will be uniformly equipped with, among other things, IV pumps, ventilators, heart monitors, climate-controlled drug boxes and that ambulance transport delays caused by missing equipment will be eliminated or significantly minimized.

54. Community Ambulance has established a rural plan that contemplates the impact on existing CON Holders and the residents of rural areas.

55. Community Ambulance established by a preponderance of the evidence that its proposed rural plan will not harm the incumbent CON holder(s) in Maricopa County, while improving access to interfacility ambulance service for those in rural and wilderness areas through the availably of an additional provider to assist during peak loads or periods of system overload.

56. Community Ambulance has established by a preponderance of the evidence that there is a need for the proposed ambulance transport service operation in Maricopa County.

Substandard Performance

57. Community Ambulance established at the hearing that the definition of nonurgent transfers under the Customer Agreement overlaps with the definition of urgent transfers under AMR's CON 136.

58. Evidence presented during the hearing from AMR's data reporting established that arrival times for nonurgent transfers under the Customer Agreement (which are similar to urgent transfers under CON 136) were, at times, more than 30 minutes and, at times, more than 60 minutes.

59. Evidence presented during the hearing further established AMR believes the term "within" for purposes of calculating compliance with its interfacility arrival time requirements means an ambulance responding to an urgent call is compliant with its CON if it arrives at the facility either 30 minutes before or 30 minutes after the agreed upon arrival time.

60. The term "within" is not defined in CON 136 or by the statutes and rules governing ambulance service. Where, as here, "the legislature has not defined a word or phrase in a statute, [courts] will consider the definitions of respected dictionaries." *DeVries v. State*, 221 Ariz. 201, 207, 211 P.3d 1185, 1191 (Ct. App. 2009) (citing *Urias v. PCS Health Sys., Inc.*, 211 Ariz. 81, 85, ¶ 22, 118 P.3d 29, 33 (App. 2005) see also A.R.S. § 1–213 (2002) ("Words and phrases shall be construed according

to the common and approved use of the language.") Merriam-Webster defines "within" as "before the end of" as in before the end of a time period. *See* https://www.merriam-webster.com/dictionary/within. The Oxford online dictionary defines "within" as "Occurring inside (a particular time period.") *See* https://en.oxforddictionaries.com/definition/within.

61. While Community Ambulance did not establish substandard performance by a preponderance of the evidence by AMR, ABC, or Maricopa Ambulance, Community Ambulance raised questions about AMR's compliance with its urgent and nonurgent arrival time requirements under its CON in light of its arrival time performance reported under the Dignity Health Customer Agreement and based on its potentially erroneous interpretation of the term "within" as used in CON 136.

Other Matters

62. Community Ambulance established by a preponderance of the evidence that competition among private providers of ambulance service in a large market serves public necessity.

63. Community Ambulance established by a preponderance of the evidence that there is a need for an additional provider of interfacility transports in Maricopa County.

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

64. Community Ambulance established by a preponderance of the evidence that it is ownership, which includes Dignity Health, management team, and operators have the necessary expertise integrity, fiscal competence, and resources to provide the proposed ambulance service in Maricopa County.

65. Community Ambulance established by a preponderance of the evidence that it is fit and proper to provide the services proposed as defined by A.R.S. § 36-2201(21) and required by A.R.S. § 36-2233(B)(3).

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

Proposed Service Area (in accordance with A.R.S. § 36-2233(E)(2):

The entire geographical boundaries of Maricopa County, excluding there from all of the incorporated and/or unincorporated areas that are within the boundaries for all 911 and/or emergency calls of the following entities:

Buckeye Valley Rural Volunteer Fire District (CON 8); North County Fire and Medical (CON 114); Lifeline Ambulance Service (CON 62); RM Arizona Holdings, dba Canyon State Ambulance (CON 58); American Medical Response of Maricopa (CON 136); Black Canyon Fire Department (CON 121); Daisy Mountain Fire District (CON 105); Gila Bend Rescue Ambulance (CON 78); Mesa Fire and Medical (CON 140); City of Phoenix ETS (CON 76); PMT (CON 71); Rio Verde Fire District (CON 143); Rural Metro Corporation (Maricopa) (CON 109); Sun Lakes Fire District (CON 12); Surprise Fire and Medical (CON 141), and Maricopa Ambulance, LLC (CON 146).

66. Response times are not a factor to be considered for Community Ambulance's interfacility and convalescent CON Application, however, Community Ambulance established through uncontroverted testimony that if awarded a CON it will commit to the incorporation of interfacility arrival time standard requirements into its CON.

67. Although Intervenors raised some questions about Community Ambulance's ability to reach all areas of Maricopa County in 30 minutes for urgent transfers, Community Ambulance established that it could cover a significant geographic area of Maricopa County in 30 minutes during rush hour, and could reach all of the Dignity Health facilities in 30 minutes during rush hour.

68. Community Ambulance further established that it is capable of handling all of its proposed 11,315 transports in Maricopa County with its proposed 6 ambulances, with 5 in service, operating 24 hours per day, 7 days per week.

69. Communtiy Ambulance further established it will be available to provide ambulance service to rural and wilderness areas of Maricopa County in collaboration with existing CON holder(s) when the CON holder(s) in that area either cannot respond to an interfacility call or require assistance to clear extremely long ETA's that are having an impact on patient care and welfare.

70. Community Ambulance established by a preponderance of the evidence that the proposed service area is in the best interests of the public.

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

<u>Proposed rates and charges:</u>

i.	**Advanced Life Support Base Rate**	**$952.81**
ii.	**Basic Life Support Base Rate**	**$848.73**
iii.	**Mileage Rate (Per Loaded Patient Mile**	**$19.75**
iv.	**Standby Waiting Charge (per hour)**	**$212.18**

71. Community Ambulance has asked to participate in the Phoenix Uniform Rate Group. No evidence was offered to establish that Phoenix Uniform Rate Group rates were not just, reasonable or sufficient for Community Ambulance's proposed ambulance service.

72. Errors in an ARCR do not preclude an Applicant from receiving a CON. Community Ambulance established that its first-year net revenue on 11,315 transports at the Phoenix Uniform Rates will be $596,924, after taking into the account adjustments for the errors in its revised ARCR.

73. Community Ambulance has established by a preponderance of the evidence that its proposed rates are just, reasonable, and sufficient.

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

74. Community Ambulance has provided uncontroverted evidence that it will operate an interfacility and convalescent ambulance transportation service 24 hours per day, 7 days per week. Community Ambulance has further provided uncontroverted evidence that this service will include Advance Life Support and Basic Life Support ambulance transport service.

75. Community Ambulance has established by a preponderance of the evidence that its proposed 24 hours per day, 7 days per week, interfacility and convalescent transportation service is in the best interests of the public.

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

76. Community Ambulance has provided uncontroverted evidence that it has addressed all the necessary information set forth in A.A.C. R9-25-902, except for certain ministerial items that will be provided following a decision to issue a CON, but before starting operations.

77. Community Ambulance established by a preponderance of the evidence that it has addressed or will provide the necessary information set for in A.A.C. R9-25-902 and as required by A.R.S. § 36-2233.

G. If the initial CON is approved, will the CON holder operated by Community Ambulance begin using e-PCR technology?

78. Community Ambulance provided uncontroverted testimony that it will use e-PCR technology in connection with its proposed operation.

79. Community Ambulance established by a preponderance of the evidence that it will use e-PCR technology in connection with its proposed operation.

H. If the initial CON is approved, will the CON holder operated by Community Ambulance begin submitting e-PCR data to the AZ-PIERS system?

80. Community Ambulance provided uncontroverted testimony that it will submit e-PCR data to the AZ-PIERS system.

81. Community Ambulance established by a preponderance of the evidence that it will submit e-PCR data to the AZ-Piers system.

I. If the initial CON is approved, will the CON holder operated by RBR Management, LLC, dba Community Ambulance, fully participate in the Premier EMS Agencies program?

82. Community Ambulance established that it intends to satisfy all requirements to fully participate in the Premier EMS Agency's program.

83. Community Ambulance established by a preponderance of the evidence that it will fully participate in the Premier EMS Agency's program.

J. If the initial CON is approved, will the CON holder operated by RBR Management, LLC, dba Community Ambulance, fully participate in Bureau of EMS and Trauma System quality improvement initiatives?

84. Community Ambulance provided uncontroverted testimony that it would fully participate in all BEMSTS quality improvement initiatives, including those specifically listed.

85. Community Ambulance established by a preponderance of the evidence that it will fully participate in all BEMSTS quality improvement initiatives, including those specifically listed.

RECOMMNEDED DECISION

In consideration of the foregoing, it is recommended that the Director of ADHS approve the proposed Application, directing BEMSTS to issue a CON to RBR Management, LLC (registered to do business in Arizona as Community Ambulance, LLC), dba Community Ambulance, ("Community Ambulance"), upon Community Ambulance's confirmation that it is ready to immediately assume all rights and responsibilities under that CON.

RESPECTFULLY SUBMITTED this 28th day of January, 2019

HENDRICKS MURPHY, PLLC

By *_/s/ Brendan Murphy_*
Brendan Murphy
3101 N. Central Ave., Suite 970
Phoenix, Arizona 85012

THE MEYERSON LAW FIRM
Jeffrey Meyerson
2555 East Camelback Road
Suite 140
Phoenix, Arizona 85016

Attorneys for Applicant

ORIGINAL filed this 28th day of January, 2019 via the OAH electronic document filing system https://portal.azoah.com/oedf, with copies provided to all parties on the approved mailing list by posting through the designated OAH website at https://portal.azoah.com/oedf/documents/2017-EMS-0104-DHS/index.html, in accordance with Case Management Order No. 1.

MS WORD Version of the foregoing
to be hand-delivered January 29, 2019
to the Honorable Administrative Law Judge
Tammy L. Eigenheer

By: /s/ *Brendan Murphy*