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**IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

In the Matter of:

RBR Management LLC, dba Community  
Ambulance

Applicant.

Docket No. 2017--EMS-0104-DHS  
(EMS No. 0283)

**MARICOPA AMBULANCE  
PROPOSED FINDINGS OF  
FACT AND CONCLUSIONS OF  
LAW**

(The Honorable Tammy Eigenheer)

Proposed findings of fact:

1. Applicant is only seeking a CON to do interfacility and convalescent transports and will not participate in the 911 system. ADHS Exh. 1.
2. Dignity's values, needs, and required services can be provided for in a contract. RT 10/22/18 at 82, 92, 112; RT 10/23/2018 at 346.
3. Dignity assumes that Applicant will provide 100% of Dignity's transports. RT 10/22/18 at 179.
4. Dignity is a majority owner of Applicant.
5. Dignity expects and Applicant agrees that Dignity its its first and foremost concern and that Dignity's transports will be prioritized. *Passim*.
6. Applicant performed no needs assessment. RT 10/23/18 at 318-319. The only needs of concern to Dignity were its needs. Id. The only "needs" evaluated by Applicant were Dignity's. RT 10/25/2018 at 906.

7. Dignity and Applicant offered no evidence that any Intervenor was not in compliance with its CON mandated response times. Id. at 337.
8. Jeff O'Malley conceded that Applicant's model of subservience to Dignity's needs could be "incredibly inefficient." Id. at 356.
9. Jeff O'Malley testified that he would not award a contract to an ambulance company unless he determined "you're a good ambulance company first." Id. at 361-62.
10. Dignity awarded a general services ambulance contract to Maricopa Ambulance. MA Exh. 37.
11. Dignity had no evidence that Maricopa Ambulance had ever failed to respond to a call for a transport. Id. at 365.
12. Jeff O'Malley understands that the relevant CON market is still an immature market. Id. at 372.
13. The 911 market is riskier and likely less financially remunerative than that for IF transports. Id. at 373.
14. Dignity expects Applicant to put Dignity's needs first and foremost. *Passim*. Applicant never refuted this expectation. *Passim*. Applicant expects to be "laser-focused" on Serving Dignity. RT 10/25/2018 at 886.
15. It is Dignity's expectation that Applicant will perform no other transports that would come at the expense of a Dignity transport. Id. at 436-437.
16. Before the current contract with Maricopa Ambulance, Dignity never reached out to Maricopa Ambulance to do a transport. RT 10/24/2108 at 612.
17. Dignity's employees testified that now that it is doing transports, Maricopa Ambulance is fast and friendly and that there have never been any issues with Maricopa Ambulance transports. Id. at 689, 694.
18. Applicant's drive time maps are neither realistic nor accurate. They do not account for ambulance down time or when ambulances are not actually at posting stations. Id. at 727-728.

19. Applicant is unacceptably reliant on EMS Advisors who is not a principal of Applicant and did not testify. Id. at 798.
20. Applicant's plan for rural ambulance services of to "let" other CON holders do rural IF transports. Id. at 837. Applicant does not know the actual number of these transports and could not timely reach these rural areas in any event. RT 10/25/18 at 865-869; 885. Applicant would do a rural IF transport if a Dignity patient would otherwise be waiting for several hours. RT 10/24/2018 at 838.
21. Applicant conceded that the number of rural IF transports it would be "letting" other CON holders take "would be very few." RT 10/25/2018 at 871.
22. Applicant had no idea what services other CON holders could provide in its proposed service area. Id. at 855.
23. Applicant has no real understanding of how the Department mandates or evaluates response times. Id. at 887.
24. Applicant conceded that 911 services have a greater risk of nonpayment than IF services. Id. at 903.
25. Applicant conceded that it was not alleging that any intervenor had substandard performance. Id. at 908-910; 917.
26. Applicant conceded that existing CON holders can provide all of the services it proposes. Id. at 918.
27. Applicant conceded it had "no idea" what rural areas were in its proposed service area. Id.
28. Applicant offered no evidence on public necessity. RT 10/26/2018 at 1166-1167.
29. Applicant has no plan for ensuring that ambulance service will be maintained and improved for rural communities. Id. at 1180-83.
30. Dr. Argue testified that
  - a. Competition is a necessary and existing component in a CON system including in this system. RT 10/26/2018, at 1208-1209;

- b. Consumers, such as Dignity, rely on the competitive alternatives that exist in the market and that even the threat of the loss of transports will result in improves service. Id at 1209;
- c. Ambulance service can reflect on a hospital, but if the provider is giving excellent service – “Maricopa Ambulance is faster and friendlier” – that reflects positively on the hospital. Id. at 1212;
- d. The RFP contract process that currently exists in Arizona’s CON system enhances competition and improves service. Id. at 1214-1215;
- e. One component of a CON system is to maintain a financially stable and financially viable system. Id. at 1218;
- f. A hospital that is a majority owner of an ambulance service would be financially incentivized to direct transports to that carrier. Id. at 1234;
- g. Even if Applicant is not in the market, competition among the existing CON holders will compel CON holders to improve service and submit improved bids for contracts. Id. at 1239;
- h. There was no evidence that any of the Intervenors did not have the financial or operational capacity to provide the services Applicant was seeking to provide. Id. at 1237-1238;
- i. The 911 system has infrastructure costs associated with it that an IF provider will not have to bear, id. at 1244, and that Applicant will be able to vet its transports in a financially more beneficial manner than providers that do both 911 and IF transports. Id. at 1243-1245; ADHS Ex. 12;
- j. Applicant’s “plan” to allow existing CON holders to do rural transports would result in a “pretty small number” of transports, although Dr. Argue had no idea how small that number really was. Id. at 1247-1248;
- k. The CON system, as it is currently arrayed in Maricopa County, already provides financial incentives to the market participants to improve their

service to be able to effectively compete for contracts and transports. Id. at 1249-1250;

1. Even the threat of a new entrant in the market will cause existing CON holders to up their game and improve their services. Id. at 1252-1253.
31. Aaron Sams testified that the statutes and rules that govern ambulance services in Arizona are in place to protect the public based on the needs of the public in that area in consideration of the adequacy of the current services being provided.
32. The needs of Dignity do not equate to the needs of the public.
33. Notwithstanding Dignity's pique, it did not know how to analyze arrival times as those times are analyzed by the Department. Id. at 1589.
34. Maricopa Ambulance received its CON in August 2016. RT 11/6/2018 at 1625; CA Exh. 43.
35. Maricopa Ambulance has been the subject of no complaints from the Department. Id. at 1626.
36. Maricopa Ambulance has the financial and operational capacity to perform all of the services contemplated by Applicant's application. Id. at 1627, 1632; MA Exhs. 20 and 21.
37. Granting Applicant's application will have a negative impact on the 911 system as a whole.
  - a. Per Mr. Gibson, whose testimony was un rebutted:

So when we look at this and scale this whole thing, we look at it in a way of, all right, so if all of a sudden *there's a chunk of revenue pulled out of the system*, whether it's like an ecosystem that was approved -- and I call it an ecosystem -- was approved for all the CON holders, not just myself, my company, but AMR, ABC, ... They all are dependent in the greater economics of this environment. *So you start pulling out chunks of that to another competitor, you don't -- you don't allow us -- the other providers who are mandated to provide service in the unincorporated areas or even in*

*some 911 system -- our costs are still there. But the cost of the new CON holder pulls out a lot of revenue. In fact, our costs are more expensive now. We don't have the revenue to provide it, and so it's going to make the rates go up, because I can't pull -- to maintain my CON levels, I can't pull down resources to provide services in other areas. RT 11/6/2918, at 1633 (emphasis added)*

- b. Per Mr. Ryals, whose testimony was also unrebutted, granting a CON to Applicant, who will only do IF transports, will have a negative impact on the 911 system:

THE WITNESS: You have to understand, Your Honor, how what I refer to as mixed providers deploy their resources. And Mr. Gibson testified about it. *When you have a mix of 911 business and you have a mix of interfacility business, you have resources out there. You have resources that, to some degree, are dedicated to the 911 system and a ton of interfacility units surrounding it and in that system. The way the system works is you don't normally pull 911 units out of the system to run interfacility unless you have very high levels of coverage in that 911 area. What does routinely happen is that as a 911 system has a peak load and starts tying up the dedicated 911 units, the providers will use interfacility vehicles and interfacility crews to back up the 911 system. So we call that surge deployment. If you've got 10 ambulances in the system for 911, 8 of them get tied up on calls, that's a surge -- occurs at different times of the day sometimes -- and that provider -- that mixed provider has the ability to pull from the interfacility fleet to augment that 911 system.*

*Well, in the proposed application of Community Ambulance, they're not proposing to do any 911. And they take 11,000 and change transports - interfacility transports out of the system, both Maricopa Ambulance, to some degree, AMR, to a greater degree, will have to reduce the number of interfacility units because they no longer have demand for them. And when they reduce that number of interfacility units, they have fewer units available to back up the 911 system. Id. at 1747-1748 (emphasis added)*

38. Maricopa Ambulance will accommodate Dignity's contractual requests for equipment and services subject to state approval. Id. at 1684.
39. Between Maricopa Ambulance and the existing CON holders there is more than ample capacity to handle all of the transports proposed in Applicants application. Id. at 1699.
40. There is already keen competition in this market including between AMR and Maricopa Ambulance. Id. at 1715. The loser of a contract award is significantly incentivized to improve its services and its bid to regain any contract it lost. Id. at 1715.
41. For every call identified by Dignity for which it claimed a problem, Maricopa Ambulance had an ambulance available. Id. at 1725. One of the purposes of Roy Ryals' analysis was to determine if Maricopa Ambulance had received a call to do a Dignity transport and whether Maricopa Ambulance had an ambulance available. Id. Generally, no call was ever received and invariably Maricopa Ambulance had an ambulance available. Id; MA Exhs. 27b, c, d, and e, 28a, 29, 30-35, 36 a-e.
42. Mr. Ryals provided un rebutted testimony that Applicant's system model, staffing, number of ambulances, and ability to meet projected arrival times was substantially inadequate and that Applicant would not be able to meet its projected arrival times unless it materially increased the number of its employees and ambulances or materially reduced the number of transports it would do. Id. at 1735-1742.
43. As currently postured, granting Applicant a CON for IF transports will impair the 911 system because the 911 operators will have the same infrastructure costs with less revenue available to support those costs. Because Applicant's system model is inadequate, once Applicants ambulances are deployed, Applicant will have to turn to other CON holders, including AMR, ABC, and Maricopa Ambulance, to do urgent IF transports. But because these operators

will now have less revenue, they may well have fewer assets, which will require calls to 911. Id. at 1744-1746.

44. Applicant will impair the 911 system by requiring existing CON holders to reduce their IF fleet without any correlating benefit to the 911 system. Applicant will get essentially guaranteed IF transports from Dignity, but will not have to use its ambulances to support the 911 system or pay for or otherwise support the 911 infrastructure. Id. at 1747-1748.

### Conclusions of Law

1. Maricopa Ambulance incorporates by this reference its memorandum re Law that Governs, filed herein on October 15, 2018, and its Post-Hearing Memorandum filed on January 28, 2018.
2. Applicant has not sustained its burden of proving that it should be granted a CON.
3. Applicant has not submitted or proposed an adequate plan to ensure that ambulance service will be maintained and improved for rural communities.
4. Applicant has not met its burden of proving that its service model will be cost-effective and will not result in higher ambulance rates.
5. Applicant has failed to submit an adequate assessment of the impact of a successful application on individuals living within and in rural and wilderness areas adjacent to the service area requested and has failed to submit a plan to address that impact.
6. Applicant has failed to submit an adequate assessment of the financial and operational impact of a successful application on the ability of an existing CON holder to serve residents within and living in rural and wilderness areas adjacent to the CON service area requested.
7. Applicant has failed to submit a plan to ensure continued ambulance service in rural and wilderness areas should the current CON holder be unable to serve those areas.

8. Applicant has conceded that there is no substandard performance.
9. Applicant has failed to establish that there will not be a deleterious financial impact on 911 operators and the 911 system as a whole.
10. Applicant has failed to establish that there is a need for additional convalescent or interfacility transports.
11. Applicant has failed to prove that it has the expertise to run an Arizona ambulance system and, therefore, has failed to prove that it is fit and proper.
12. Applicant has failed to sustain its burden of proof that its service is needed, that "public necessity" requires it, that granting this CON will not have a deleterious financial impact on existing providers and the system as a whole, that there is substandard performance, and that this is anything other than an unfair arrangement that would give Applicant a leg up and an unfair advantage.
13. This Application is denied.

Respectfully submitted this 28<sup>th</sup> day of January, 2019.

**JBELANGER LAW PLLC**

By /s/ James J. Belanger  
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## **CERTIFICATE OF SERVICE**

ORIGINAL filed using the OAH electronic document filing system <https://portal.azoah.com/oedf> on January 28, 2019, 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/2016A-EMS-0381-DHS/2016A-EMS-0381-DHS-0018.pdf>.

/s/ James J. Belanger