

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

Adriane J. Hofmeyr - State Bar No. 025100
adriane@hofmeyrlaw.com
Attorney for ABC Ambulance, LLC

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

<p>In the Matter of:</p> <p>RBR Management LLC, dba Community Ambulance</p> <p>Applicant.</p>	<p>Docket No. 2017-EMS-0104-DHS (EMS No. 0283)</p> <p>ABC AMBULANCE'S REPLY TO ITS OBJECTION AND MOTION TO EXCLUDE PREVIOUSLY WITHHELD FINANCIAL DOCUMENTS</p> <p>(Assigned: The Hon. Tammy L. Eigenheer)</p>
---	--

Although A.A.C. R2-19-106(D) does not specifically cover replies to motions, it is understood that this tribunal indicated, during the July 26, 2017 Prehearing Conference herein, its willingness to entertain replies to motions (upon which Applicant itself apparently relied when it filed a reply to a motion on August 28, 2017). ABC Ambulance, LLC ("ABC") therefore respectfully requests that this tribunal consider this short Reply to Applicant's "Response to Motion to Exclude Audited Financial Records" filed on March 6, 2019 ("Response").

In its Response, Applicant makes two arguments to support the post-hearing, post-briefing admission of new exhibits: it argues that "the Regulations do not require financial statements from Applicant,"¹ and the exhibits "are reliable and confirm profitability in

¹ Response, p. 2, Heading.

1 Nevada.”² Neither argument addresses the reasons given by ABC for their exclusion: that
2 (1) Applicant deliberately chose to **withhold** the documents (going to far as to say they are
3 “not relevant”); (2) the disclosure is **grossly late** (well beyond the pre-hearing disclosure
4 deadline, well beyond the hearing itself, in the final brief in these proceedings); and (3) their
5 lateness **materially prejudices** the Intervenors (who are unable to challenge the foundation
6 and contents of the new exhibits).

8 Applicant hints at a justification for their lateness by stating that it is “in response to
9 ABC’s novel interpretation to the regulations at issue – raised for the first time in its closing
10 brief,”³ but this is disingenuous. Applicant is clearly and unapologetically offering the new
11 exhibits to show “Community Ambulance’s **financial strength and solidity**,”⁴ and to
12 “**confirm profitability** in Nevada,”⁵ the same reason given when it submitted them.⁶
13 Anticipating that Applicant may rely on its Nevada financial records to support its
14 Application, five months before the hearing started, ABC requested copies of these financial
15 records, arguing “because of Applicant’s **reliance on the Nevada entity’s business model**
16 **and experience** to show that it is ‘fit and proper,’ the **financial and other records of the**
17 **Nevada’s entity’s business** relevant to these proceedings.”⁷ And ABC was correct – this is
18 the exact reason that Applicant offers to justify the submission of these new exhibits now.

19 Applicant’s *legal* argument on the interpretation of the Regulations (made in its Response
20
21
22
23
24

25 ² Response, p. 4, Heading.

26 ³ Response, p. 2:5.

27 ⁴ Response, p. 2:8-9 (emphasis added).

28 ⁵ Response, p. 4, Heading (emphasis added).

⁶ “These financial statements show quite clearly that Community Ambulance is a **profitable and well financed** ambulance service with **sufficient financial capacity and resources** to operate its proposed services successfully as proposed under the revised ARCR.” Response to Intervenors’ Closing Arguments, p. 25:11-14 (emphasis added).

⁷ ABC’s Objection and Motion to Exclude Previously Withheld Financial Documents, p. 2, 6.

1 to ABC’s Written Closing Argument, and simply repeated and extended in its Response)⁸
2 does not begin to address the fact that Applicant chose to withhold the documents before
3 the hearing, and at the hearing, and wishes to submit them now **to prove a factor that it**
4 **knew it would have to prove at the hearing.** The *legal* argument on the interpretation of
5 the Regulations *is irrelevant* to whether Applicant should be permitted to submit (at the
6 very end of briefing) and rely on these exhibits to meet its burden of proof. If Applicant
7 wanted to rely on these financial records to show that it is fit and proper, it should at a very
8 minimum have presented them at the hearing.
9

10
11 Applicant’s second argument – that the exhibits should be admitted because they
12 “are reliable”⁹ – is simply irrelevant. The Intervenors have been denied fundamental due
13 process rights by Applicant’s withholding of these documents until the very end of briefing,
14 irrespective of their alleged “reliability.”
15

16 Applicant’s arguments fail to justify the just-in-case, preposterously-late, prejudicial
17 disclosure of previously-withheld financial records.
18

19 RESPECTFULLY SUBMITTED this 8th day of March 2019.

20 HOFMEYR LAW PLLC

21 By /s/ Adriane J. Hofmeyr _____

22 Adriane J. Hofmeyr

23 *Attorney for ABC Ambulance, LLC*

24 CERTIFICATE OF SERVICE

25 Original filed using the OAH electronic document filing system
26 <https://portal.azoah.com/oedf> this 8th day of March, 2019 with copies provided to all parties
27 on the approved mailing list by posting through the designated OAH website as
28 <https://portal.azoah.com/oedf/documents/2015A-EMS-0190-DHS/index.html> in
accordance with Case Management Order No. 1.

⁸ Response to Intervenors’ Written Closing Arguments, pp. 24-25.

⁹ Response, p. 4, Heading.