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**BEFORE THE DIRECTOR OF THE
ARIZONA DEPARTMENT OF HEALTH SERVICES**

<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 RESPONSE TO APPLICANT'S MOTION FOR REVIEW</p> <p>(Assigned: The Hon. Tammy L. Eigenheer)</p>
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Intervenor ABC Ambulance LLC (“ABC”) hereby responds to Applicant’s Motion for Review filed on June 18, 2019 (“Motion”), which, except for some minor tweaks, adds nothing to the briefing already before the Office of Administrative Hearings (“OAH”) and adds nothing to its Memorandum addressed to the Director on May 3, 2019 (“Memorandum”). In the absence of any new argument or newly discovered evidence, the Director is requested to uphold her decision posted on May 23, 2019 (“Decision”), accepting the Recommended Decision of the Administrative Law Judge (“ALJ”) sent to the Director on April 15, 2019 (“Recommendation”).

This response is supported by the attached Memorandum of Points and Authorities, the entire record in these proceedings to date, as well as the correspondence to the Director from the parties before she issued her Decision. ABC also joins in the responses filed by

1 the AMR CON Holders and Maricopa Ambulance in response to the Motion.

2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **A. STANDARD FOR REVIEW**

4 ACC R9-1-103(C) sets out the reasons upon which the Director may grant review of
5 an administrative decision, including that a movant must show “irregularity in the
6 proceedings,” “an abuse of discretion that deprived the party of a fair hearing,” “newly
7 discovered material evidence that could not with reasonable diligence have been discovered
8 and produced at the original hearing,” “error in the admission or rejection of evidence,” and
9 “the decision is not supported by the evidence or is contrary to law.”
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12 Here, Applicant has done none of these things, its Motion should be denied, and the
13 Decision should be upheld.

14 **B. THE MOTION IS AN ALMOST VERBATIM REPEAT OF THE** 15 **MEMORANDUM**

16 The Motion is, with the one exception discussed below, simply a verbatim repeat of
17 Applicant’s arguments submitted to the Director before she issued her Decision. *See*
18 bulleted list of “serious errors” replicated in the Motion (pp. 3-7) from the Memorandum
19 (pp. 2-6); bulleted list of “new, innovative” things Applicant hopes to introduce (Motion,
20 pp. 8-9; Memorandum, pp. 8-9); almost-verbatim replication of text (Motion, pp. 9-11 v.
21 Memorandum, pp. 9-11), with the same arguments under the same headings (Motion, pp.
22 13-68; Memorandum, p. 11-64), with some minor non-material tweaks.¹
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25 Applicant relies on **nothing new** – no new evidence and no new arguments – to
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27 ¹ For example, “This is shocking” (Memorandum, p. 37:18) is now “This, however, is appealable error” (Motion, p.
28 40:1). Also, Applicant adds an argument regarding Maricopa Ambulance’s prior record of “shutter[ing] an
ambulance company” and yet were still held to be fit and proper (Motion, pp. 53-55).

1 persuade the Director to change her mind. These are all arguments that the Director has
2 been presented with before. In the absence of any new issue being raised by Applicant at
3 this late stage, the Director (who presumably took all these arguments into account when
4 first presented to her) is justified in upholding her Decision.

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6 **C. WHAT'S NEW IN THE MOTION**

7 For the first time, Applicant blithely suggests that the Director offer Applicant a
8 “narrowed scope for its CON.” Motion, p. 12:12. Not only has Applicant never requested
9 this before (either of the ALJ, the Department or the Director), but it ignores (and **does not**
10 **remedy**) the fundamental flaw in Applicant’s case: based on the evidence it chose to put
11 on, Applicant **failed to prove** public need and it failed to show that it was fit and proper.
12 **Limiting the scope** of its CON does not in any way affect the **lack of evidence of public**
13 **need, or the lack of evidence that it is fit and proper.** This last-ditch attempt to ask the
14 Director to tailor a CON in some form that suits Dignity Health does not create public need
15 where none was shown, and it does not make Applicant fit and proper to hold such a CON.
16 This suggestion should be disregarded.

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19 **D. APPLICANT’S REPEATED ARGUMENTS ARE NOT SUPPORTED BY**
20 **THE RECORD OR THE LAW**

21 **a) Applicant’s innovation dreams are not supported by the record**

22 Applicant is excited about its plan to “dramatically innovate the ambulance
23 transportation process.” Motion, p.8-10. However, Applicant introduced no evidence to
24 back these plans up. No funding for these plans was included in Applicant’s *pro forma*
25 ARCRs. No business plan for this project was offered into evidence and no person with the
26 skills to manage such a project was identified. And most tellingly, **Applicant has never**
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1 **implemented or even started working on the promised innovations in Las Vegas**
2 (where it currently operates). As good as the concept may sound, Applicant has offered
3 nothing to back them up, and they may be disregarded.

4 **b) Applicant's failure to provide sufficient evidence that it is fit and proper was its**
5 **own doing**

6 Applicant relied heavily on the gravitas presented by its majority-owner, Dignity
7 Health, to establish that it is fit and proper.² However, Applicant is a separate entity that has
8 been operating an ambulance company in Nevada for over eight years, and yet **refused to**
9 **produce at the hearing any financial statements from its Nevada operations.** In fact, in
10 opposition to ABC's request for such financials, Applicant called them "**not relevant.**"³
11 Applicant finally attempted to put them into evidence by attaching them to the very last
12 brief in the proceedings, when no other party had the opportunity to challenge anything
13 relating to the documents or their contents or how they in fact contradict the testimony
14 already on the record.⁴ The ALJ fairly and correctly refused to admit them into evidence.⁵
15 In their absence, Applicant was unable to show that it was fit and proper. This fatal flaw
16 remains and is not remedied by any arguments made in Applicant's Motion.

17 **c) Applicant continues to misconstrue public need, believing Dignity's desire to own**
18 **and control its own ambulance service is sufficient to show public need; it is not**

19 Applicant chose to put on evidence of only one type of "need": that of **Dignity**
20 **Health.**⁶ Ultimately, the ALJ was not convinced that a showing of **Dignity Health's** wants
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25 ² Motion, pp. 51-53.

26 ³ Applicant's Objections and Responses to ABC Ambulance's Subpoena Duces Tecum to RBR Management dba
Community Ambulance, filed on July 25, 2018, p. 13:21-27, p. 14:1-2.

27 ⁴ Response to Intervenor's Closing Argument filed by Applicant on February 21, 2019.

28 ⁵ Case Management Order No. 8.

⁶ Applicant devoted the majority of its hearing to six witnesses from Dignity Health, all of whom testified about the
needs of Dignity Health to have its own in-house IFT service. For e.g., Tr. Vol. 1, p. 135:5-9, Tr. Vol. 1, p. 180:12-

1 was sufficient to show that “**public necessity requires**” the proposed service.⁷ In the
2 glaring absence of a showing that **public** necessity required Applicant’s proposed service,
3 the finding by the ALJ (and the Decision based thereon) was supported by the evidence,
4 and should not be disturbed.

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6 **E. CONCLUSION**

7 Applicant has made no specific allegations of irregularity in the proceedings or abuse
8 of discretion by the ALJ. Rather, Applicant simply disagrees with the ALJ’s weighing of
9 the evidence and finding that Applicant’s evidence was insufficient. The Recommendation,
10 and the Decision based thereon, are supported by the evidence (or lack thereof) presented
11 at the hearing, and the Director is requested to uphold her Decision.
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14 RESPECTFULLY SUBMITTED this 3rd day of July, 2019.

15 HOFMEYR LAW PLLC
16 By /s/ Adriane J. Hofmeyr
17 Adriane J. Hofmeyr
18 *Attorney for ABC Ambulance, LLC*

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20 **CERTIFICATE OF SERVICE**

21 ORIGINAL mailed this 3rd day of July, 2019 to:

22 Dr. Cara Christ
23 Director
24 Department of Health Services
25 150 N. 18th Avenue
26 Phoenix AZ 85007

27 COPIES emailed this 3rd day of July, 2019 to:

28 Clerk of the Department
ACR@azdhs.gov

15, Tr. Vol. 2, p. 353:7-10, and Tr. Vol. 2, p. 353:11-14.

⁷ A.R.S. § 36-2233(B)(2).

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