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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

ABC Ambulance,

Applicant.

Docket No. 2019--EMS-0151-DHS

**MOTION TO INTERVENE AND
NOTICE OF APPEARANCE**

(The Honorable Thomas Shedden)

Maricopa Ambulance, LLC, dba Maricopa Ambulance, through undersigned counsel, moves for an order authorizing its intervention in the above referenced matter. If this motion to intervene is granted, this pleading will also constitute undersigned counsel's notice of appearance on behalf of Maricopa Ambulance.

Maricopa Ambulance is the holder of CON No. 147. Maricopa Ambulance's legal interests are not represented by any other party to this proceeding and will likely be materially affected by any hearing and determination in this matter.

Applicant, ABC Ambulance, provides scheduled interfacility and convalescent ground ambulance transports. It is not authorized to do 911 or emergency response. Applicant's CON was granted in 2015 with express limitations pursuant to a Stipulation and Settlement Agreement in *ABC Ambulance LLC v. Arizona Department of Health*

Services, Case no. LC20144000185 (the “Settlement Agreement”). The Settlement Agreement resolved litigation between ABC and the Department arising from an ALJ recommendation that ABC not be granted a CON.

The Notice of Hearing in the instant matter states that the Applicant seeks to amend its Certificate of Necessity (“CON”) to eliminate limitations regarding the number of ambulances it may operate.¹ As noted, these limitations were imposed pursuant to the Settlement Agreement, which emphasized, among other things: (1) that Applicant had, at least what at that time, was considered a unique capability to do transports arising in the behavioral and mental health context and (2) that a limitation on the number of ambulances would not materially impair those providers that also did 911 and emergency response in addition to scheduled interfacility and convalescent transports.

With very limited geographical exception, Maricopa Ambulance’s CON authorizes it to provide a full array of ground ALS and BLS ambulance services throughout Maricopa County, including 911 initiated transports and scheduled interfacility and convalescent transports. Because there is a significant overlap in Applicant’s proposed ground ambulance service and service area, and Maricopa Ambulance’s authorized ground ambulance service and service area, Maricopa Ambulance’s interests are implicated and potentially affected by this proceeding.

¹ Applicant’s CON states that “ABC shall have a maximum of 10 ambulances in year one, up to 5 additional ambulances in year two, and up to 5 additional ambulances within the next three years (with a maximum of 20 ambulances registered through year 5). For each year thereafter, ABC shall have a maximum of 2 additional ambulances per year.”

OAH's rules permit Maricopa Ambulance to intervene in this matter pursuant to A.A.C. R2-19-102(C):

If a procedure is not provided by statute or these rules, an administrative judge may issue an order using the Arizona Rules of Civil Procedure or related local rules for guidance.

Rule 24(a)(2), A.R.C.P., provides that a party has a right to intervene in a matter when it "claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

Maricopa Ambulance has one or more protectable interests in these proceedings sufficient to satisfy the standard under Rule 24. No other parties will adequately protect those interests. It has been the accepted practice in these types of proceedings, moreover, that the existing provider in a given service area is deemed to have an interest sufficient to justify intervention when another provider seeks to amend an existing CON with a resulting potential impact on existing CON holders.

Based upon the foregoing and the record in this matter, Maricopa Ambulance requests:

1. that the Administrative Law Judge ("ALJ") grant Maricopa Ambulance's Motion to Intervene, after a hearing if the ALJ deems that to be necessary, and that Maricopa Ambulance be allowed access to OAH's electronic database for filing and automatic notice of items filed by other parties;

2. that the ALJ schedule and conduct a Prehearing Conference pursuant to A.A.C. R2-19-112, to discuss and enter appropriate prehearing orders to facilitate and streamline the parties' preparation for the hearing, including establishing deadlines to the filing of lists of witnesses and exhibits and exchanges of exhibits, issuing subpoenas (if necessary); and

3. that the ALJ enter other orders deemed to be just and equitable in this matter.

Respectfully submitted this 4th day of June, 2019.

JBELANGER LAW PLLC

By /s/ James J. Belanger
James J. Belanger
Attorneys for Maricopa Ambulance, LLC

CERTIFICATE OF FILING

ORIGINAL filed on the OAH website at <http://www.azoah.com/mptions.html>

/s/ James J. Belanger