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BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

Docket 2019-EMS-0151-DHS
(EMS No. 01381)

In the Matter of:

ABC Ambulance

Applicant.

**MOTION FOR INTERVENING PARTY
STATUS (MULTIPLE AMR CON
HOLDERS), AND FOR PREHEARING
CONFERENCE / PREHEARING ORDER
/ PERMISSION TO APPEAR
TELEPHONICALLY AT PREHEARING
CONFERENCE**

Pursuant to A.R.S. §36-2234 (providing for the hearing in this matter), Arizona Administrative Code §§R2-19-102(C), R2-19-106 and R2-19-112(A), and Ariz.R.Civ.Pro. Rule 24, the below identified subsidiaries of AMR HoldCo, Inc. hereby move for entry of an order allowing each intervening party status in this matter. All have a vested interest in this proceeding.

These moving parties also submit that a Prehearing Conference should be scheduled in this matter and request that this Office issue its order setting that Prehearing Conference, outlining in its order what issues will be discussed [R2-19-112(A)]. They likewise request that undersigned counsel be given permission to appear telephonically at that Prehearing Conference. *Id.*

1 This motion is supported by the following Memorandum of Points and Authorities
2 and all matters of record herein.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 Pursuant to the Notice of Hearing recently issued in this matter (dated May 17,
5 2019), the Applicant has requested an amendment of its Certificate of Necessity (“CON”)
6 to remove the currently existing limitations on the number of ambulances the Applicant is
7 allowed to operate. See, Notice of Hearing, pp. 1 and 3. The Applicant ONLY provides
8 scheduled interfacility and convalescent transports. *Id.*, p. 1. The existing ABC Ambulance
9 service area overlaps the CON service areas for the following AMR HoldCo, Inc. (“AMR”)
10 subsidiaries (hereafter referred to collectively as “AMR CON Holders” or “AMR entities”):

11 American Medical Response of Maricopa, LLC (CON 136)
12 Rural/Metro Corp - Maricopa (CON 109)
13 Professional Medical Transport, Inc. (CON 71).

14 Among the issues to be considered at hearing is that of whether public necessity
15 supports removal of the limiting language currently found on the Applicant’s CON (*see, id.*,
16 p. 3), which issue necessarily includes the impact of a successful application on existing
17 CON holders in Maricopa County, as well as on public they serve.

18 Further, these existing CON holders are uniquely situated to provide information
19 relevant to the overall hearing, including but not limited to the public necessity factors and
20 the appropriateness of the Applicant’s proposed amendment.

21 While no statute or administrative rule states a standard for intervention, R2-19-
22 102(C) states that in the absence of such statute or administrative rule, an administrative
23 law judge may issue an order using the Arizona Rules of Civil Procedure for guidance. In
24 this regard, the Arizona Rules of Civil Procedure, at Rule 24, recognize intervention both
25 as a matter of right and by way of court permission. Intervention as a matter of right is
26 required when the moving party “claims an interest relating to the property or transaction
27 which is the subject of the action and the [moving party] is so situated that the disposition

1 of the action may as a practical matter impair or impede the [moving party's] ability to
2 protect that interest, unless [the moving party's] interest is adequately represented by
3 existing parties." *Id.*, Rule 24(a).

4 Here, the AMR CON Holders are entitled to intervene as a matter of right. The
5 overlap of Applicant's service area with the AMR entities' various CON service areas
6 supports this. The expanded services Applicant apparently proposes to provide (by virtue
7 of removal of the limitation on the number of ambulances it may operate) are already being
8 provided by one or more of these AMR entities, in various places throughout the county.
9 While these entities are not proposing they have any sort of a property right by virtue of
10 their CONs (which will be contrary to A.R.S. §36-2236), the "interest" required under Rule
11 24(a)(2) is not limited to property rights. Rather, these entities obviously have a legal
12 interest in the ambulance transports existing within their current service area, as
13 demonstrated by the fact that the "public necessity" factor that A.R.S. §36-2233(B)(2)
14 requires be established includes consideration of whether the proposed amendment is
15 supported by public necessity, based upon a number of factors including the existence of
16 current ground ambulance service to the subject area and the availability of other CON
17 holders in the subject area. R9-25-903(A).

18 No other party appearing in this matter will be able to protect these entities' interests
19 in the critical issues underlying the initial public necessity determination. As existing CON
20 holders that are already providing the precise type and level of ambulance transport
21 services to the service area Applicant is certificated for, these entities' interests in their
22 existing CONs would be affected by the expansion of the Applicant's current authority. As
23 such, ADHS/BEMSTS has historically taken the position that if the subject service area of
24 an application overlaps the current service area of an existing CON holder, that existing
25 CON holder has the right to intervene. Similarly, ADHS/BEMSTS has historically not acted
26 to represent any existing CON holder's interests in an application or hearing such as this

1 one. Finally, these AMR CON Holders are in a unique position to gather and provide
2 information for this Office's consideration, and for the Director's consideration, regarding
3 the expected impact of an order granting the requested amendment.

4 For all of the above stated reasons, it is respectfully requested that this Office enter
5 an order (1) ruling that the above itemized AMR CON Holders are entitled to intervening
6 party status; (2) authorizing the webmaster to treat these entities as interested parties
7 herein (allowing them access to OAH's electronic database for filing); and (3) setting a
8 Prehearing Conference so that case management deadlines may be discussed and
9 established. In this last regard, it is requested that undersigned counsel be allowed by
10 appear telephonically at that Prehearing Conference in order to avoid the AMR entities
11 incurring the expense associated with the undersigned traveling from Tucson to Phoenix
12 for the Prehearing Conference, and to possibly avoid requests to reschedule in the event
13 the undersigned has other matters scheduled in Tucson on the same day selected for the
14 Prehearing Conference.

15 RESPECTFULLY SUBMITTED THIS 6th day of June, 2019.

16 **FLETCHER STRUSE FICKBOHM & WAGNER PLC**

17 /s/ RONNA L. FICKBOHM
18 Ronna L. Fickbohm
19 *Attorneys for AMR CON Holders*

20 Copy hereof filed through the
21 OAH Website <http://www.azoah.com/motions.html>
22 this 6th day of June, 2019.

23 Courtesy copy via email
24 this 6th day of June, 2019 to:

25 Kevin Ray
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9 By: /s/ Linda Clark

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