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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

ABC Ambulance,

Applicant

Case No.: 2019-EMS-0151-DHS

**ADHS/BEMSTS' RESPONSE TO  
AMR CON HOLDERS' MOTION FOR  
INTERVENING PARTY STATUS  
AND TO ABC'S OBJECTION**

(Assigned to the Hon. Thomas Shedden)

The Arizona Department of Health Services, Bureau of Emergency Medical Services and Trauma System ("the Bureau" or "BEMSTS"), hereby responds to the Motion for Intervening Party Status filed by the AMR C.O.N. Holders (C.O.N. Nos. 136, 109, and 71) and the ABC Objection.

The Motion to Intervene

Since the Office of Administrative Hearings does not have its own procedures for intervention, the AMR C.O.N. Holders seek the right to intervene and to actively participate in this hearing pursuant to Rule 24 of the Arizona Rules of Civil Procedure. That rule provides, in pertinent part, that anyone shall be permitted to intervene in an action who:

claims an interest relating to the subject of the action and is so situated that the disposing of the action in the person's absence may as a practical matter impair or impede the person's ability to protect that interest, unless existing parties adequately represent that interest.

*Id.*

1 The Bureau's position is that if the proposed service area of a particular C.O.N.  
2 application overlaps the current service area of another C.O.N. holder and involves a  
3 type of service shared with the other C.O.N. holder, then the overlapped C.O.N. holder  
4 has a right to intervene. In this situation, the Bureau is satisfied that: 1) ABC's current  
5 service area overlaps a large part of the AMR C.O.N. Holders' service areas; and 2)  
6 because the AMR C.O.N. Holders already have the legal authority to perform  
7 interfacility/convalescent advanced life support ("ALS") and basic life support ("BLS")  
8 ambulance transports like ABC, there is an overlap in the type of ambulance services  
9 provided as well. Based on the foregoing, the Bureau believes that the AMR C.O.N.  
10 Holders have a protectable interest at stake and therefore has no objection to the AMR  
11 C.O.N. Holders' pending motion for intervention.

#### 12 ABC's Objection to Motions to Intervene

13 The Bureau disagrees with ABC's primary argument in its Objection that, as a  
14 matter of law, the AMR C.O.N. Holders (and Maricopa Ambulance) have no  
15 Intervenor-status protectable rights for purposes of this hearing. (ABC Objection at 1).  
16 ABC argues that its application to allow ABC to increase its fleet size is simply an  
17 internal administrative matter exclusively governed by Department rules R9-25-1001 to  
18 R9-25-1006. (ABC Objection at 5). Lifting that limitation is not, as ABC argues, a  
19 simple administrative act governed by Article 10 in the referenced Department rules.  
20 ABC's argument completely ignores the fact that the Director's limitation/restriction on  
21 the allowable number of ABC ambulances is set forth on the ABC C.O.N. itself,  
22 requiring a C.O.N. amendment to remove it. The limitation/restriction registered on  
23 ABC's C.O.N. provides the following:  
24

25 *“\*Special Provisions: The CON includes the following limitations on the number*  
26 *of ambulances: ABC shall have a maximum of 10 ambulances in year one, up to 5*  
27 *additional ambulances in year two, and up to 5 additional ambulances within the next*  
*three years (for a maximum of 20 ambulances registered through year 5). For each*  
*year thereafter, ABC shall have a maximum of 2 additional ambulances per year.”*

1 (A copy of ABC's C.O.N. with the limitation/restriction noted is attached as  
2 Exhibit A).

3 Pursuant to A.R.S. §36-2234(A), the Director is required to hold a public hearing  
4 on any proposed action related to a C.O.N. The Notice of Hearing (NOH) identified  
5 several specific factors for hearing: R9-25-903(A)(4); R9-25-903(A)(6), and R9-25-  
6 903(B). Among other things, those factors specifically require evidence on the  
7 availability of other certificated providers, the availability of emergency medical  
8 services in all or part of the service area, the need for additional  
9 interfacility/convalescent ambulance transports, and the financial impact on other  
10 certificated providers—all factors requiring evidence related to the proposed  
11 Intervenor(s) in this case. *See*, NOH paragraph #9.

12 The Bureau generally agrees with ABC that if no such limitation/restriction  
13 existed on the ABC C.O.N., ABC would be free to increase the size of its ambulance  
14 fleet in accordance with Department rules and without potential intervenors involved.  
15 Instead, because the limitation/restriction is set forth on the ABC C.O.N. and was  
16 expressly added to protect C.O.N. holders from financial impact who operate in the  
17 same service area and offer the same type of ambulance service sought by ABC, the  
18 proposed Intervenor(s) clearly has/have a protectable interest in this application to  
19 amend ABC's C.O.N.

20 DATED this 13th day of June, 2019.

21 MARK BRNOVICH  
22 Attorney General

23 /s/ Kevin D. Ray  
24 Kevin D. Ray  
25 Assistant Attorney General  
26 *Attorneys for BEMSTS*  
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1 **CERTIFICATE OF SERVICE**

2 **ORIGINAL** filed using the OAH electronic document filing system  
3 <https://portal.azoah.com/oedf> this 13th day of June, 2019, with copies provided to all  
4 parties on the approved mailing list this 13th day of June, 2019, by posting through the  
5 designated OAH website at [https://portal.azoah.com/oedf/documents/2019-EMS-0151-  
6 DHS/index.html](https://portal.azoah.com/oedf/documents/2019-EMS-0151-DHS/index.html).

7 By: /s/ Koren Lyons  
8 PHX #7968201

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## **EXHIBIT A**

# ARIZONA DEPARTMENT OF HEALTH SERVICES

STATE OF ARIZONA

CERTIFICATE NO. - 139 -

County of Maricopa

} ss

DOCKET NO. EMS 00317

THE ARIZONA DEPARTMENT OF HEALTH SERVICES has found, under the authority of A.R.S. § 36-2232 et seq and Pursuant to Department of Health Services rules, that public necessity requires the operation of

## ABC AMBULANCE

as a ground ALS and BLS ambulance service in the State of Arizona for the transportation of individuals who are sick, injured, wounded or otherwise incapacitated or helpless within the following service area, with the following central operations station and response times:

### 1. Service Area:

*Maricopa County, as of the date of the settlement, excluding therefrom all of the incorporated and/or unincorporated areas that are within the boundaries of:*

- i. Buckeye Valley Rural Volunteer Fire District dba Buckeye Valley Volunteer Unit (C.O.N. No. 8);*
- ii. The Fire District of Sun City West dba Fire District of Sun City West Ambulance Service (C.O.N. No. 114); except for the campus of Banner Del E. Webb Medical Center located at 14502 W. Meeker Boulevard, Sun City West 85375;*
- iii. Life Line Ambulance Service, Inc. (C.O.N. No. 62);*
- iv. R/M Arizona Holdings Inc., dba Canyon State Ambulance, dba Payson Medical Transport, dba Lifestar EMS (C.O.N. No. 58)*

2. Legal Address: *2336 E. Magnolia Street, Phoenix, AZ 85034*

3. Response Times: *Not Applicable*

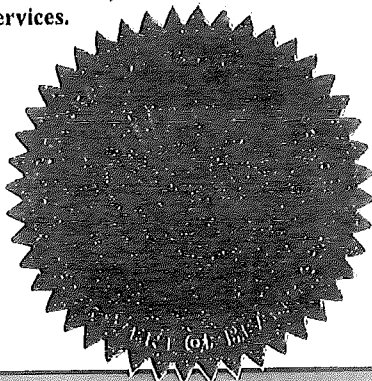
Now, therefore, by virtue of the authority vested in the Arizona department of Health Services, under the constitution and laws of the State of Arizona, does hereby grant this

RENEWAL

## CERTIFICATE OF NECESSITY

authorizing the operation of the aforesaid ambulance service for a period ending May 14, 2022 unless for cause sooner amended, suspended, revoked or terminated subject to the decisions and orders, and rules of the Department.

PROVIDED, that this certificate shall not be assigned nor transferred unless authorized by the Arizona Department of Health Services.



BY THE ORDER OF THE ARIZONA DEPARTMENT OF HEALTH SERVICES, IN WITNESS WHEREOF, I Cara M. Christ, MD. the Director of the Arizona Department of Health Services, have hereunto set my hand and caused the official seal of the Arizona Department of Health Services to be affixed at Phoenix, Arizona on March 26, 2019

Cara M. Christ  
DIRECTOR

# ARIZONA DEPARTMENT OF HEALTH SERVICES

STATE OF ARIZONA

} ss

County of Maricopa

CERTIFICATE NO. - 139 -

DOCKET NO. EMS 00317

*Continued from page one*

**4. Type of Service: *Interfacility Transports and Convalescent Transports***

*\*Special Provisions: The CON includes the following limitations on the number of ambulances: 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 (for a maximum of 20 ambulances registered through year 5). For each year thereafter, ABC shall have a maximum of 2 additional ambulances per year.*

**5. Hours of Operation: *24 hours per day – 7 days per week***

**CERTIFICATE OF NECESSITY**

(CONTINUATION PAGE ONE)

  
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DIRECTOR