

1 Hofmeyr Law PLLC
2 31 N. 6th Avenue
3 Suite 105-466
4 Tucson, Arizona 85701
5 TELEPHONE 520.477.9035

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

9 **BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**

| | |
|---|--|
| <p>10 In the Matter of:</p> <p>11 ABC Ambulance LLC</p> <p>12 Applicant.</p> | <p>13 Docket No. 2019-EMS-0151-DHS</p> <p>14 REQUEST FOR ORAL</p> <p>15 ARGUMENT</p> <p>16 ON ABC'S MOTION FOR</p> <p>17 RULINGS OF LAW TO LIMIT OR</p> <p>18 CLARIFY ISSUES AT HEARING</p> <p>19 (Assigned: The Hon. Thomas Shedden)</p> |
|---|--|

20 Applicant, ABC Ambulance, LLC, ("ABC") hereby requests that oral argument be
21 held on its Motion for Rulings of Law To Limit or Clarify Issues at Hearing filed on June
22 19, 2019 ("Motion").

23 ABC reached out to counsel for the other parties in this case, to ascertain whether
24 their clients would be opposed to (1) ABC's seeking leave to file a reply, and/or to (2)
25 conducting oral argument on the Motion. Counsel for intervenor Maricopa Ambulance
26 responded that his client would oppose ABC's filing a reply but was not opposed to oral
27 argument. Neither counsel for the Department nor the AMR CON holders responded with
28 their views. In an attempt to not expand the briefing herein (by filing a motion to be
permitted to file a reply which it knows will be opposed), ABC is requesting that oral
argument be held, for the reasons below:

1 **A. PROCEDURAL BACKGROUND**

2 On June 19, 2019, ABC filed the Motion, requesting the ALJ to legally interpret the
3 relevant statute and Regulations, and apply them to ABC’s Application.

4 On June 26, 2019, the ALJ granted motions to intervene filed by Maricopa
5 Ambulance and the AMR CON Holders. In the same order, the ALJ also ordered that both
6 intervenors (as well as ADHS) could file responses to ABC’s Motion by July 1. *See* Case
7 Management Order No. 4.

8 On June 27, 2019, the AMR CON Holders filed a response to Applicant’s Motion.

9 On July 1, 2019, ADHS and Maricopa Ambulance filed responses to Applicant’s
10 Motion.
11

12 **B. GIVEN THE COMPLEXITY AND NOVELTY OF THE ISSUES, AND
13 GIVEN THE NUMBER OF OPPOSING BRIEFS, AND GIVEN THAT SOME
14 INACCURATE ASSUMPTIONS ARE BEING RELIED ON, IT IS FAIR TO ALLOW
15 ABC THE OPPORTUNITY TO RESPOND**

16 The issues raised by ABC in its Motion are novel¹ – essentially asking what is the
17 required procedure for an amendment to a CON that is not specifically listed in R9-25-905,
18 especially where the practical effect is an action governed by another regulation (R9-25-
19 1001); and also asking to clarify the wording of the issue to reflect that the test should more
20 properly be whether it is justifiable to maintain a licensing condition where the
21 Department’s written reasons for the licensing conditions ceased to exist within a year.
22

23 The issues are complex, involving the interpretation and synchronization of public
24 health and safety statute and regulations. There is already confusion regarding the standard
25

26
27
28

¹ ADHS stated (during the status conference held on June 24, 2019) that it believes ABC’s Motion to be “extraordinary.”

1 to be applied at a CON amendment hearing.² This is not a settled area of law, and the issues
2 raised by ABC in its Motion are well served by being fully argued before the ALJ.

3 Finally, certain incorrect allegations and assumptions have been made in the
4 intervenors' responses, which require correcting before a decision is reached.

5
6 ABC requests that oral argument be held on its Motion at a date and time convenient
7 for the ALJ. Alternatively, if the ALJ does not wish to hold oral argument, then ABC
8 requests the opportunity to file a single reply brief to the arguments made by ADHS and
9 intervenors.

10
11 RESPECTFULLY SUBMITTED this 1st day of July, 2019.

12 HOFMEYR LAW PLLC
13 By /s/ Adriane J. Hofmeyr
14 Adriane J. Hofmeyr
15 *Attorney for ABC Ambulance, LLC*

16 **CERTIFICATE OF SERVICE**

17 ORIGINAL filed using the OAH electronic document filing system
18 <https://portal.azoah.com/oedf> this 1st day of July, 2019, with copies provided to all parties
19 on the approved mailing list this 1st day of July, 2019, by posting through the designated
20 OAH website at [https://portal.azoah.com/oedf/documents/2019-EMS-0151-
21 DHS/index.html](https://portal.azoah.com/oedf/documents/2019-EMS-0151-DHS/index.html).

22
23
24
25 By: /s/ Adriane Hofmeyr

26 _____
27 ² For example, in the Matter of Arizona Ambulance of Douglas (an application to amend a *service area* limitation on
28 a CON in 2016), neither “public necessity” nor “R9-25-905” is even mentioned in the Notice of Hearing. *See* Notice
of Hearing filed on November 10, 2015 under case no. 2016A-EMS-0137-DHS. Moreover, that applicant’s counsel
(the same counsel representing the AMR CON Holders in the current proceedings) also cast doubt on whether R9-25-
903 was applicable to *that* CON amendment. *See* Applicant’s Pre Hearing Memorandum filed on February 8, 2016,
p. 3:24-26, 4:1-26.