

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In the Matter of:
4 ABC Ambulance
5 Applicant.

No. 2019-EMS-0151-DHS

6 **CASE MANAGEMENT ORDER No. 5**

7 Confirming Order Granting Motions to
8 Intervene

9 Denying Motion for Rulings of Law to Limit
10 or Clarify Issues at Hearing

11 Denying Request for Oral Argument

12
13 The Applicant, ABC Ambulance holds CON 139 that has a “Special Provision”
14 that limits the number of ambulances that ABC may operate. ABC filed with the
15 Department an application to amend its CON through which it seeks to have this fleet
16 limitation removed from the CON.

17 Maricopa Ambulance, holder of CON 147, and the three AMR entities holding
18 CONs 136, 109, and 71 each filed a Motion to Intervene.¹ These motions were granted
19 in a ruling made orally at a prehearing conference on June 24, 2019.

20 The Department’s Notice of Hearing shows that a hearing is required pursuant to
21 ARIZ. REV. STAT. section 36-2234(A), and the Department included among the issues
22 for resolution the question of whether there is a public necessity to make the change to
23 CON 139 that ABC is requesting.

24 ABC filed a Motion for Rulings of Law to Limit or Clarify Issues at Hearing.
25 Through its Motion, ABC asserts that the Department has erred (1) by setting the
26 matter for a hearing because the regulations do not allow for a hearing on the request
27 made by ABC, and (2) by setting as an issue the question of whether there is a public
28 necessity to make the change to CON 139 that ABC requests. ABC further asserts that

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30 ¹ American Medical Response of Maricopa, LLC (CON 136) Rural/Metro Corp - Maricopa (CON 109)
Professional Medical Transport, Inc. (CON 71).

1 if public necessity is to be considered at the hearing, the issue should be stated as
2 whether public necessity requires that the fleet limitation be retained.

3 The Department, Maricopa, and AMR filed Responses. ABC subsequently filed a
4 Request for Oral Argument on its Motion and a request to add an exhibit to its Motion
5 for Rulings of Law.

6 Confirming Ruling Granting Motions to Intervene

7 Maricopa and AMR moved to intervene in the matter, citing ARIZ. ADMIN. CODE
8 section R2-19-102 and Arizona Rule of Civil Procedure 24. The Department responded
9 providing its position that in situations such as this one where Maricopa's and AMRs'
10 service areas overlap with ABC's service area, the overlapping CON holders have a
11 right to intervene because those CON holders have a protectable interest in the subject
12 matter of the hearing. ABC objected for reasons including arguments set out in its
13 Motion for Rulings of Law.

14 The issues for hearing include whether a public necessity exists for the change
15 that ABC requests be made to CON 139. As set out in the applicable rules, this will
16 include an evaluation of the financial impact on Maricopa and AMR and may include
17 other questions about their operations. Consequently,

18 **IT IS ORDERED** granting Maricopa Ambulance LLC's Motion to Intervene;

19 **IT IS FURTHER ORDERED** granting American Medical Response of Maricopa,
20 LLC, Rural/Metro Corp – Maricopa, and Professional Medical Transport, Inc.'s Motion
21 to Intervene.

22 Denying Motion for Rulings of Law to Limit or Clarify Issues at Hearing and Motion for

23 Oral Argument

24 As set out above, ABC asserts that the Department has no regulatory authority
25 to require a hearing on the request made by ABC. According to ABC, because
26 removing a limitation from a CON is not listed in ARIZ. ADMIN. CODE section R9-25-905,
27 the Department has no authority to set the matter for hearing. ABC also argues to the
28 effect that because no hearing is required by R9-25-905, R9-25-903 is not applicable
29 and it is not required to show that there is a public necessity for the change it is
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1 requesting. The Department, Maricopa and AMR filed Responses opposing ABC's
2 Motion and requesting that it be denied.

3 ARIZ. REV. STAT. section 36-2234(A) provides that "[t]he director shall require a
4 public hearing on any proposed action related to ... certificates of necessity." The
5 Department argues that the list in R9-25-905 is not exhaustive and that the rule cannot
6 control over the statute. Regarding the issues for hearing, the Department argues that
7 these have been properly set following ARIZ. REV. STAT. section 41-1092.05, and that
8 the issues have been properly framed. The Department notes that these issues were
9 set by the Director's office and that it had knowledge of the arguments raised in ABC's
10 Motion before it issued the Notice of Hearing

11 ABC filed a Motion requesting oral argument on its Motion for Rulings of Law
12 and it filed a motion requesting that it be allowed to supplement that Motion with a
13 "newly discovered" exhibit, which is the Administrative Law Judge Decision in Docket
14 No. 2018A-EMS-0033-DHS.

15 The Department set this matter for a hearing in accordance with Title 41, Ch. 6,
16 Art. 10. With few exceptions, those statutes require that all parties "shall have the
17 opportunity to respond and present evidence and argument on all relevant issues."
18 ARIZ. REV. STAT. § 41-1092.05(D). Consequently, it is appropriate to deny ABC's Motion
19 and to allow the parties to present evidence and legal argument regarding the issues
20 for hearing as set out in the Notice of Hearing.

21 In its request for oral argument, ABC asserts that the issues for resolution are
22 complex and that Maricopa's and AMR's responses to ABC's Motion contain incorrect
23 allegations and assumptions. Because ABC's concerns can be addressed through the
24 presentation of evidence at the hearing and legal argument after the presentation of
25 evidence, it is not necessary to hold oral argument on the Motion. For the same reason,
26 ABC's request to file a Reply in support of its Motion is denied.

27 **IT IS ORDERED** that ABC's Motion for Rulings of Law to Limit or Clarify Issues
28 at Hearing is denied;

29 **IT IS FURTHER ORDERED** that ABC's Request for Oral Argument is denied.
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Done this day, July 15, 2019.

/s/ Thomas Shedden
Thomas Shedden
Administrative Law Judge

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