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BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

Critical Air Response Enterprises, LLC
dba AirCare1 Ground Ambulance
Division

Applicant.

Docket 2020-EMS-0004-DHS
(EMS No. 01216)

**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)]. These issues should include prehearing deadlines for disclosure of intended witnesses and exhibits, motions and any subpoena requests. These AMR CON Holders 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 July 2, 2019),
5 the Applicant has requested issuance of an initial Certificate of Necessity ("CON"). See,
6 Notice of Hearing, pp. 1 and 3. The Applicant ONLY requests authority to provide
7 scheduled interfacility and convalescent transports. *Id.* Applicant's proposed service area
8 (all of Maricopa County plus the incorporated area of the City of Apache Junction in Pinal
9 County) 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 in whole or in part:

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

15 Among the issues to be considered at hearing is that of whether public necessity
16 requires the proposed service and if such service would be in the public's best interest
17 (*see, id.*, p. 2), which issue necessarily includes the impact of a successful application on
18 the AMR CON Holders, as well as on public they serve.

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

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

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

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

18 No other party appearing in this matter will be able to protect the AMR CON Holders'
19 interests in the critical issues underlying the initial public necessity determination. As
20 existing CON holders that are already providing the precise type and level of ambulance
21 transport services to the service area Applicant seeks unlimited interfacility and
22 convalescent transport authority to serve, these entities' interests in their existing CONs
23 would be affected by the Applicant's requested authority. As such, ADHS/BEMSTS has
24 historically taken the position that if the subject service area of an application overlaps the
25 current service area of an existing CON holder, that existing CON holder has the right to
26 intervene. Similarly, ADHS/BEMSTS has historically not acted to represent any existing
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1 CON holder's interests in an application or hearing such as this one. Finally, these AMR
2 CON Holders are in a unique position to gather and provide information for this Office's
3 consideration, and for the Director's consideration, regarding the expected impact of an
4 order granting the requested amendment.

5 For all of the above stated reasons, it is respectfully requested that this Office enter
6 an order (1) ruling that the above itemized AMR CON Holders are entitled to intervening
7 party status; (2) authorizing the webmaster to treat these entities as interested parties
8 herein (allowing them access to OAH's electronic database for filing); and (3) setting a
9 Prehearing Conference so that case management deadlines may be discussed and
10 established. In this last regard, it is requested that undersigned counsel be allowed to
11 appear telephonically at that Prehearing Conference in order to avoid the AMR entities
12 incurring the expense associated with the undersigned traveling from Tucson to Phoenix
13 for the Prehearing Conference, and to possibly avoid requests to reschedule in the event
14 the undersigned has other matters scheduled in Tucson on the same day selected for the
15 Prehearing Conference. Due to pre-existing calendar conflicts that cannot be changed,
16 it is also requested that the Prehearing Conference **not** be scheduled for Tuesday, July
17 23rd (morning); Thursday, July 25th (afternoon); Thursday, August 1st (morning); August 5-9
18 (entire week); or August 12th.

19 RESPECTFULLY SUBMITTED THIS 15th day of July, 2019.

20 **FLETCHER STRUSE FICKBOHM & WAGNER PLC**

21 /s/ RONNA L. FICKBOHM
22 Ronna L. Fickbohm
23 *Attorneys for AMR CON Holders*

24 Copy hereof filed through the
25 OAH Website <http://www.azoah.com/motions.html>
26 this 15th day of July, 2019.

1 Copy via mail this 15th day of
2 July, 2019 to:

3 Clerk of the Department
4 Arizona Department of Health Services
5 150 N. 18th Ave., Room 200
6 Phoenix, AZ 85007

7 Copy via email only
8 this 15th day of July, 2019 to:

9 Kevin Ray
10 Office of the Attorney General
11 2005 N. Central Ave.
12 Phoenix, AZ 85004
13 *Attorneys for Arizona Department of Health Services/BEMSTS*

14 Copy via mail this 15th day of
15 July, 2019 to:

16 Denise Waye, President
17 Critical Air Response Enterprise, LLC dba
18 AirCare1 Ground Ambulance Division
19 5345 Wyoming Blvd., NE
20 Albuquerque, NM 87109

21 Jessica Rigler
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23 150 N. 18th Ave., Suite 505
24 Phoenix, AZ 85007

25 Aaron Sams, MBA
26 Certificate of Necessity & Ambulance Rates Manager
27 ADHS/Bureau of Emergency Medical Services & Trauma System
28 150 N. 18th Ave., Suite 540
Phoenix, AZ 85007-3248

29 Tammy Eigenheer
30 Administrative Law Judge
31 Office of Administrative Hearings
32 1740 W. Adams, Lower Level
33 Phoenix, AZ 85007

34

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36 By: /s/ Linda Clark

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