

EDIC UNIT San Luis Ambulance Celebrates 75th Year of Service (see page 12)





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Circulation among California's private ambulance providers, elected officials and EMSA administrators.



President's Message

Todd Valeri
President
California Ambulance Association

hroughout my life, I have always hoped to leave this world a little better than I found it. This was also true in my role as President of the California Ambulance Association. The CAA has such a rich history built on the combined effort of ambulance industry titans. Their legacy set a high bar for achieving improvement within the association.

As my term as President of the CAA comes to an end, I'm pleased to reflect on the many accomplishments we have made as an association. Of course, these are not my achievements. This is the product of many people working together to get things done through member involvement with the Board of Directors and various committees. Some of the things we have been able to collectively accomplish include:

- The addition of Rob Lawrence as our Executive Director. Rob works behind the scenes to do much of the groundwork for CAA initiatives and has made my role as CAA President relatively easy.
- Selection of Arc Strategies as our legislative advocate through a competitive selection process. Both Amy Brown and Jonathon Feldman have worked hard to make inroads on a variety of legislative challenges. While the CAA is but one voice in a complex political dialogue, I feel they have done

well to make our goals and concerns known at the State Capitol.

- Renewal of our contract with CAMS for association management following an extensive RFP process. Going through this process helped strengthen our relationship with CAMS and reaffirmed that Kim Oreno, et. al. are working hard to keep the gears of the CAA turning.
- Addition of Doug Wolfberg of Page, Wolfberg and Wirth as our Medicare and reimbursement consultant. Doug and his team have been supporters of the CAA for many years. We are fortunate to have strengthened that relationship through a service contract to support the Payer Issues Committee.
- Contracting with AALRR for Amber Healy to provide HR Committee consulting support. Amber is a highly experienced attorney skilled in California's complex employment law issues.
- e Establishment of an IFT Committee to help address the concerns of ambulance companies focusing mostly on IFT services. For years, this was a segment of ambulance providers that received little attention focused on their needs. Thanks to Melissa Harris and Max Laufer for stepping up to co-chair the committee and move it forward on the CAA's agenda.

- Establishment of the HR Collaborative to create a space where complex human resources issues can be discussed and best practices can be shared. Thank you Eve Grau and Jim Karras for co-chairing that committee and for sharing your wealth of knowledge.
- Membership dues for Active members were reduced from \$500 to \$250 per ambulance. The cap for all Active, Non Emergency and Public Agency members was reduced from \$17,5000 to \$10,000. To offset that discount, the CAA engaged in an aggressive member recruitment campaign so this reduction took place without causing a hit to the budget. Many thanks to Steve Grau and Melissa Harris for their personal outreach to potential members which contributed to the addition of 12 new ambulance company members.

While I have enjoyed a special bond with so many of you involved with the CAA, I would be remiss if I failed to mention the unique relationship developed with Jimmy Pierson and Steve Grau. I couldn't possibly count the number of times we've gotten on the phone, shared emails and texts, or even met in person to discuss CAA issues. I have relied so much on their wise counsel in fulfilling my role as CAA President. I will be eternally grateful to you both and I hope our relationships continue to grow for the rest of our lives.

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There are so many people to acknowledge and thank, and I'm sure I've left out many of them. Just please know each and every one of you are important to the CAA. I hope

when you all look back at this time in the CAA's history, you can all say you played a part in leaving it better than we found it. I also hope we all continue to collaborate

to make the CAA more powerful and provide more and more assistance to its members.

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CAA Membership is a Business Essential

The business environment, the healthcare sector and the EMS industry are evolving at an ever-increasing pace. At the CAA we are dedicated to providing members with the essential tools, information, resources, and solutions to help your organization grow and prosper. And, the CAA's collective efforts on statewide legislative and regulatory issues are not possible without strong membership support and engagement.

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Executive Director's Report

Rob Lawrence Executive Director California Ambulance Association

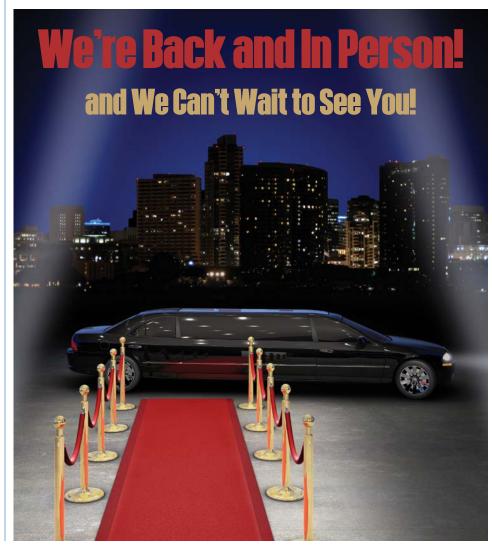
his edition of the *Siren* also celebrates our return to conferencing. From the two live events that I have attended in the last few months, there is a palpable joy of attendees seeing friends and colleagues in a live setting and not 'framed' by a Zoom screen. As we all know we are not out of the woods yet and the Delta variant has hit the nation and turned the progress clock backwards and we as EMS leaders and organizations are working hard to manage our workforce and patients.

During this time, hopefully all have both enjoyed and benefited from the CAA's committees with their collegiate nature and the advice and counsel of our consultants and subject matter experts. In fact, committees and Town Hall meetings have been exceptionally well attended with information, updates and feedback flowing freely.

It is also that time of the CAA year where we approve and identify our Board of Directors who will shape our policy and direction of travel going forward. We also welcome incoming president, James 'Jimmy' Pierson, who has served a term as VP and will now take over from Todd Valeri. As Todd steps down, it is fair to say that we are all grateful for his calm guidance, wisdom and counsel and I have certainly benefited from his guiding hand as I transitioned into the Executive Director role.

Ilook forward to meeting up with everyone at Tahoe as we continue to all work

together to provide and jointly benefit from association membership.





From Your Consultants

Page, Wolfberg & Wirth

Il of us at PWW have been thrilled to work so closely with CAA and its member organizations since our appointment as your CAA Medicare Consultant in February. It's been a busy 6 months or so since we hit the ground running, and there's been no shortage of Medicare-related news and developments to keep us all on our toes.

Since our appointment, it's been our privilege to serve you - and here are just a few of the ways we've done so - and continue to do so. We've participated in all the monthly Payer Issues Committee meetings. We continue to actively monitor the Payer Issues Forum and Listserv to answer your Medicare and compliance-related questions (keep 'em coming!). We've made mini-presentations in the CAA Town Hall meetings. We presented a Medical Necessity lesson for the CAA Reimbursement Roadshow. We monitored - and clarified where necessary – guidance issued by Noridian. We developed a Member Needs Survey to plan for the training you have said you need most. We delivered a wellattended, 4-hour web-based training program on Operational Documentation

 including call intake, non-emergency, and emergency documentation issues for CAA members.

Also, we'll be attending the Annual Convention in Lake Tahoe, and we're looking forward to seeing you there!

Here are some of the Medicare issues that are currently on the radar – or coming soon:

- Implementing the Treatment in Place (TIP) waiver where applicable;
- Navigating the temporary CMS rules put in place for the COVID-19 pandemic and preparing for the postpandemic suspension of the temporary rules;
- Complying with CARES Act reporting obligations for recipients of Provider Relief Funds
- Preparing for CMS Ambulance Cost Data Collection

 Waiting for the other shoe to drop on nationwide implementation of the Prior Authorization requirement for Repetitive Scheduled Non-Emergency Ambulance Transports (RSNAT)

As we mentioned, one of the key benefits to having a CAA Medicare Consultant is the ability for CAA members to pose their Medicare and compliance-related questions to us anytime. Members can use the Payer issues Forum or e-mail Listserv to pose their questions, and we monitor those continuously and respond promptly to all member inquiries. Be sure to take advantage of this member benefit!

We are privileged to serve as the CAA Medicare Consultant, and look forward to continuing to serve CAA members in the future.









Human Resources Update: California Supreme Court Adopts New Formula for Calculating the "Regular Rate of Pay" for Meal Period Premium Pay and Applies It Retroactively.

Amber S. Healy, Partner
Lauren S. Gafa, Associate
Atkinson, Andelson, Loya, Ruud & Romo APC

hile employers have spent the last eighteen months navigating the uncharted waters of Covid-19, the California Supreme Court has continued to weigh in on numerous issues that will impact employers for years to come. This article focuses on the California Supreme Court's recent decision in Ferra v. Lowes Hollywood Hotel, LLC, in which the Court announced a new formula for calculating the "regular rate of compensation" for purposes of penalty payments that must be paid to employees when they do not have a legally compliant meal, rest, or recovery period.

The decision in *Ferra* is a reminder that wage and hour issues continue to be at the forefront, and even during a pandemic, employers cannot lose sight of the importance of wage and hour compliance. Below we provide an overview of California's meal, rest, and recovery period requirements, including how they differ for emergency ambulance employees followed by a discussion of the *Ferra* decision and what it means for employers.

California's Meal, Rest, and Recovery Period Requirements

Nearly every wage and hour lawsuit filed in California alleges that employees were not provided compliant meal, rest, or recovery periods. California law has strict requirements regarding when and how non-exempt hourly employees must be provided such breaks. Fortunately, in 2018 California voters provided some flexibility to emergency ambulance employees through Proposition 11. Proposition 11 is codified in California Labor Code sections 880-890. Given that many Emergency Ambulance Providers ("EAPs") have some employees that are covered by Proposition 11's flexible standards and other non-exempt employees (such as office personnel) that are not covered – the standards that apply to both sets of non-exempt employees are detailed below.

Meal Period Requirements for Non-Emergency Ambulance Employees:

California employers must provide nonexempt hourly employees at least one unpaid meal period of at least 30-minutes that begins no later than the completion of the fifth hour of work. The meal period must be duty free, uninterrupted, and free of employer control. The meal period can be waived by mutual consent of the employee and the employer if no more than 6 hours of work will be performed. When a non-exempt hourly employee works more than 10 hours in a workday, the employer must provide a second compliant meal period, though this may be waived in certain instances. Employees must be free to take their meal period offsite and cannot remain on-call during their meal periods.

Rest Period Requirements for Non-Emergency Ambulance Employees:

California employers must authorize and permit non-exempt employees to take at least one paid 10-minute rest period for every four hours of work or major fraction thereof. When a non-exempt employee works more than six hours in a workday, a second paid 10-minute rest period must be authorized and permitted; and when a non-exempt employee works for more than 10 hours in a workday, a third paid 10-minute rest period must be authorized and permitted. Employees must be free to take their rest period offsite and generally cannot remain on-call.

Recovery Period Requirements for All Employees: California employers must provide to all affected employees a "recovery period," which is defined as "a cooldown period afforded to an employee to prevent heat illness," that complies with the requirements of Cal/OSHA regulations. Those regulations require paid "recovery periods" as needed that are protected by shade for no less than 5 minutes. This requirement is primarily directed to employees that are performing work in

Emergency Ambulance Employee Meal and Rest Period Rules: Post-Proposition 11, California has special standards

outdoor and/or heat elevated settings.

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regarding meal and periods for emergency ambulance employees. As a refresher, an emergency ambulance employee is defined by the law as "an emergency medical technician (EMT), dispatcher, paramedic, or other licensed or certified ambulance transport personnel who contributes to the delivery of ambulance services" and works for a private EAP. Labor Code § 888.

The flexibility permitted under the special EAP meal and rest period rules are as follows:

- An EAP may require an emergency ambulance employee to remain on-call if the employee is contacted during a meal or rest period; however, that particular meal or rest period will not be counted toward the meal and rest periods the employee is entitled to during the shift. If the employee isn't contacted, then the meal or rest break will count regardless of the fact that they had to remain on-call.
- An EAP may not require an emergency ambulance employee to take a meal period during the first or last hour of a work shift.
- An EAP must allow an emergency ambulance employee to space multiple

meal periods during a work shift at least two hours apart (no stacking).

 An EAP must manage staffing levels sufficiently to provide enough inactivity in a work shift for emergency ambulance employees to meet these requirements.

California's Penalty System for Non-Complaint Meal, Rest, and Recovery Periods

Compliance with California's meal, rest, and recovery period laws is enforced through laws that require employers to pay employees an hour of pay at their "regular hourly rate" for non-compliant meal, rest, or recovery periods. This additional hour of pay is often referred to as a "penalty" or "premium."

The Ferra Case and the New Formula for Meal, Rest, and Recovery Premium Payments

Factual Background for Ferra Case:

The plaintiff in the *Ferra* case was a bartender at the defendant-employer's hotel. The plaintiff received quarterly nondiscretionary bonuses, which when paid, triggered a re-calculation of her "regular rate of pay" for overtime premium payments. However, the employer was not using that recalculated "regular rate

of compensation" for making meal and rest break violation premium payments. Rather, it paid employees an additional hour of premium pay for meal and rest break violations at their base regular hourly rate of pay.

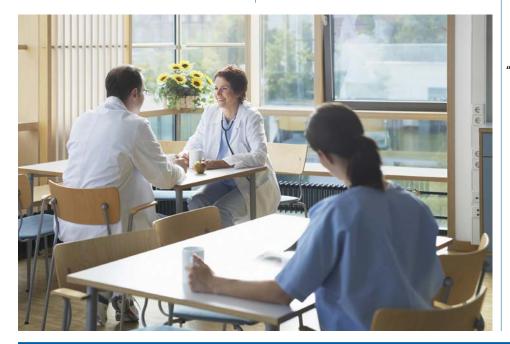
The plaintiff filed a putative class action claiming that "regular rate of compensation" for break violation premium payments was synonymous with "regular rate of pay" for overtime premium payments, and therefore, the employer had underpaid the break violation premiums. The trial court granted summary judgment in favor of the employer on this issue. The Court of Appeal affirmed, finding the two phrases were not synonymous and the employer had paid the break violation premiums correctly. In July 2021, the California Supreme Court issued its decision reversing both the trial court and the Court of Appeal and holding that an employee's base hourly rate is not the correct rate for break penalty payments when the employee, like plaintiff Ferra, has earned some form of non-discretionary pay. Instead, the break penalty payments must be recalculated and paid at the "regular rate of compensation," just as with "regular rate of compensation" recalculations required for overtime purposes when an employee has some form of non-discretionary compensation beyond her base hourly rate.

Non-Discretionary Pay and Re-Calculation of the "Regular Rate of Compensation":

Nondiscretionary payments that must be factored into determining an employee's "regular rate of compensation" include: shift differential premiums and bonuses, longevity bonuses, attendance bonuses, and safety bonuses. Most notably, the court also ruled that this decision applies retroactively.

Prior to its decision in *Ferra*, the California Supreme Court clarified how the "regular rate of compensation" must be calculated for overtime premium pay when a non-exempt employee earns a non-discretionary bonus of a fixed sum during a given pay period in addition to the employee's straight time hourly rate of pay.

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(Alvarado v. Dart Container Corp. of California (2018) 4 Cal.5th 542.) Examples include shift differential premiums and bonuses, longevity bonuses, attendance bonuses, safety bonuses, and so forth. In those circumstances, "for the limited purpose of calculating the overtime pay rate, a flat-sum bonus must be treated as if it were earned on a per hour basis throughout the relevant pay period." Emphasis in original. The employer "must factor the per-hour value of a flat-sum bonus into an employee's regular rate of pay for the relevant pay period" to correctly calculate the overtime rate of pay whether it be one and one-half times the employee's "regular rate of pay" or two times the employee's "regular rate of pay." The calculation is based on the number of straight time hours worked during the relevant pay period and not the number of straight time hours plus overtime hours, if any.

When the California Supreme Court issued its decision in Ferra, the Court applied much of the reasoning of its decision in *Alvarado v. Dart* to the question of whether non-discretionary payments earned by a non-exempt employee in addition to the employee's straight time hourly rate of pay must be factored into the employee's "regular rate of compensation" for purposes of calculating rest period, meal period, and recovery period violation penalties. The Court stated, "we use the term 'nondiscretionary payments' to mean payments for an employee's work that are owed 'pursuant to [a] prior contract, agreement, or promise,' not 'determined at the sole discretion of the employer." The Court held that non-discretionary payments must be factored in when calculating rest, meal, and recovery period violation penalties in the same way non-discretionary payments must be factored in when calculating a non-exempt employee's overtime rate of pay. As it did in Alvarado v. Dart, the Court held that its decision applies retroactively, subject to any applicable statutes of limitation.

Next Steps for Employers in Light of *Ferra:* Claims for meal, rest, and recovery period violations penalties are sought in nearly every wage and hour lawsuit

together with claims for additional penalties under the California Labor Code Private Attorneys General Act of 2004, usually referred to as "PAGA." These claims are often pursued on a class, collective, or representative basis in which one employee seeks to represents all employees of the company. To reduce potential exposure for these violations, employers should review and update their payroll policies and procedures for meal, rest, and recovery periods; and employers should ensure that premium payments include the value of any nondiscretionary earnings during the relevant pay period. In addition, since the Court's decision in Ferra applies retroactively, employers should consult with counsel and consider conducting audits to past meal, rest, and recovery premium payments for those employees that receive nondiscretionary

payments and determine what steps can be taken in order to comply with the new law.

Amber S. Healy is a partner at Atkinson, Andelson, Loya, Ruud & Romo APC, and oversees the Firm's complex employment litigation team. Amber defends employers and management in lawsuits arising out of the employee-employer relationship. Amber also works closely with clients to put proactive measures in place to avoid litigation and manage risks. Amber works closely with the CAA as its Human Resources and Employment Law Consultant.

Lauren S. Gafa is an associate at Atkinson, Andelson, Loya, Ruud & Romo APC where her practice focuses on representing employers in workplace legal matters, including preventive advice and counseling.

Human Resources Collaborative

Jim Karras Co-Chair, Human Resources Collaborative

he HR Collaborative has been busy working with the CAA's human resources consultant, Amber Healy, Esq., a partner at Atkinson, Andelson, Loya, Ruud & Romo (AALRR) identifying the current human resources topics of importance to a majority of the CAA membership.

From new wage and hour pitfalls related to calculating the correct overtime blend for rest and meal period penalty premium payments, to COVID-19 impacts to our industry's workforce, the committee has been actively reviewing these recent developments with the goal to share pertinent information to the membership in future HR Collaborative meetings, CAA Town Hall meetings and at the Annual Convention at Harrah's in Lake Tahoe.

All CAA members are invited to participate in the HR Collaborative meetings to learn the latest human resources related news and information affecting employers in California and the special considerations of interest to ambulance provider management teams. The HR Collaborative meets on the first Thursday of each month at 2PM via Zoom. Members can obtain the meeting link by logging into the CAA website, clicking "Events" and then clicking on the meeting in the calendar.

If you have a topic that you believe the HR Collaborative should explore, please send it to <code>info@the-caa.org</code> and indicate in the subject line "HR Collaborative Suggestion."

Jim is the Vice President and Chief Operating Officer of AmbuServe Ambulance Service based in Gardena, California.



Surprise Billing a Hot Topic in 2022

Donna Hankins American Ambulance

ne of the major topics that EMS will face in 2022 is handling "Surprise Billing." In a perfect world, the provider bills the insurance for a service; once the insurance pays the bill, the provider bills the secondary insurance for any copay or deductible left by the primary insurance; if no secondary insurance exists, the provider bills the patient. This process works well as long as the insurance and the provider agree the charges submitted by the provider are appropriate.

The concept of "Surprise Billing" is the situation where the insurance has discounted the bill below the provider's charges and disallowed part of the charges. The insurance has determined the rates billed by the provider are above usual and customary and are limiting the charges to bill. The insurance and the provider have a dispute about the charges submitted for the service provided. In response, the provider can either file an appeal with the insurance or bill the patient for the disputed amount. (NOTE: One concept to remember is that these situations refer to commercial insurance only. Medicare, Worker's Compensation, and Medi-Cal insurances have set allowed amounts that a provider must accept based on contracts or the standard allowed amounts. Secondarily, if the patient has Medicare or Medi-Cal as a secondary insurance, billing the patient for the disputed amount may be improper.)

If the provider bills the patient for the disputed amount, that bill will differ from the Explanation of Benefits (EOB) that the insurance has provided to the patient. The term "Surprise Bill" refers to the disputed amount between the provider and the insurance because in this situation, the patient did not expect the provider's bill that in many cases is much different from the insurance's EOB. Understanding state and federal regulations related to Surprise Billing can help a provider navigate these situations, help the provider explain the scenario to the patient in order to obtain proper payment, and prevent violation of a patient's rights.

Navigating "Surprise Billing" starts with differentiating between the Federal Bill ("No Surprises Act" passed in 2020) and the state regulations in California. The good news is the Federal bill from 2020 excluded GROUND AMBULANCE from the regulation (but has created and advisory board to study eliminating Surprise Billing by ambulances). For now, providers should monitor the No Surprises Act to see how the process works (Air Ambulance was not excluded and will follow the process starting in 2022).

Secondarily, providers need to know State Regulations to provide education to insurances and patients. In California, this requires distinction between the two insurance regulatory agencies Department of Managed Healthcare (DMHC) and California Department of Insurance (CDI). Both DMHC and CDI have some type of prohibition against surprise billing. DMHC prohibits balance billing (CCR Title 28 1300.71.39) but has a carve out for Ambulance Providers. In addition, both DMHC and CDI have potential prohibitions related to non emergency transportations (AB 72).

To summarize California Law, if a non contracted provider transports the patient:

- IN AN EMERGENCY: balance billing the patient for disputed amounts is permissible. In addition, a provider should appeal the insurance for an underpayment if the insurance is regulated by DMHC (see CCR Title 28 1300.71(a)(3)(C)) and can also file a complaint with DMHC. In those cases where a provider balance bills the patient, the provider should provide education to the patient about the regulations; the patient can then contact the insurance to file a complaint (which may result in additional payment made).
- IN A NON EMERGENCY: balance billing the patient for a disputed amount may not be permissible based on interpretation of AB 72. Consult with your legal advisor to determine if AB 72 applies to this situation and proceed with the advice you are given.



Carly's Corner

Carly Alley
Executive Director
Riggs Ambulance Service

Recruiting In the Age of Social Media

s an industry, EMS is currently seeing a mass exodus of Paramedics and EMTs, leaving many organizations facing a staffing crisis. Paramedics, EMTs, and even Nurses are changing careers after the burnout from the increased demands during the most challenging times of the COVID 19 pandemic.

To alleviate the result of high turnover rates and with an increasing lack of interest in the medical field, organizations must focus their energy on effective education and recruitment about our industry. We need to highlight the crucial roles pre-hospital care providers play and the rewarding career they can have; this should be the main goal of recruitment. Often, this cannot be done in a simple positing on your company page or job search websites.

The days of opening the Sunday paper and searching for a job in the "Help Wanted" section are long gone.

Recruiting and advertising your organization's job opportunities in the prominent social media age have taken on a new meaning.

To grab the attention of and compete for the small number of job seekers in our industry, we must transform our former recruitment practices and appeal to them on a social media platform they are already engaged in! By utilizing social media to feature our organization, we can do a better job reaching a large group of people on a very, easy to access platform. In this day and age, ease of access and "right at your fingertips" are what folks are looking for. Utilizing social media to advertise our current jobs postings can also be costeffective for your organization.

Social media not only allows you to advertise your current job listings but also offers the opportunity to showcase the true culture of your organization. Tik-tok has taken over the social media scene with everything from quick tips on daily tasks to fad dances that draw in large groups.

Imagine engaging a large group of individuals with things like the "Top 10 Best Midnight EMS Eats" in your area. How about a dance-off with your local law enforcement and/or Fire agencies; this kind of collaboration demonstrates unity in EMS and illustrates the special relationships we have with our co-responders. These are just a few examples of unique ways to show what your organization has to offer, but how do we go about doing this?

Within my organization, we formed a "Recruitment Committee." This committee is made up of current employees who

have volunteered and are interested in developing ideas for social media posts, researching what's trending, and/or creating social media content themselves! This is a great way to empower your employees and get them involved in a fun new recruitment process. There is also a bonus to this process and that is the employees get to work closely with members of management on a task they may not normally be a part of. We must not forget that our current employees are experts in our local 911 system and this makes them the best people to showcase the organization's culture and reasons why it is a great place to work at.

Once a social media campaign is started, it is important to maintain your audience. Preparation is key; developing a schedule of how you want to post, what posts you will put out, ensuring you have new content, and creating it in advance is necessary.

Frequent posts along with the utilization of specific #hashtags will keep you popping up in current social media feeds. This will keep your organization in front of as many people as possible. EMS is a fast-paced industry but social media is even faster. If we want to keep up it's time we change gears, evolve from a traditional recruitment strategy to streamlining our organization's presence through social media.

San Luis Ambulance Service Celebrates Its 75th Anniversary SAN LUIS AMBULANCE

etsey, Frank and Justin Kelton are proud to announce the 75th Anniversary of San Luis Ambulance.

The company was started in 1945 by Ken and Florence Jones and ran up until 1967 when they sold to David Flock who established stations in San Luis Obispo and Morro Bay.

In 1974 Frank Kelton, who started Five Cities Ambulance with Derrill Pilkington in 1971 merged with David until 1976 when David left and Frank purchased the balance of San Luis Ambulance and over the years, purchased all of the private ambulance companies within the county with the exception of Cambria Healthcare District.

Now with stations in Nipomo, Arroyo Grande, two in San Luis Obispo, Morro Bay, Atascadero, Templeton and Paso Robles with a staff of 151 and 22 ambulances including two four-wheel drive vehicles.

Further San Luis Ambulance has it's our own repair shop with three great mechanics and a maintenance division with two staff members.

Our success is due to the staff of 151 we have. Our General Manager Chris Javine has been with the company for 35 years and Director of Operations Joe Piedalue for over 34 years along with our Office Manager Jody Soule who has been with the company for 20 years.

Betsey Kelton has been with the company for 20 years, Justin Kelton for 17 years and Chief Cook and Bottle Washer Frank will log his 50th year as an owner next year in 2021.

A huge thank you to all past and present staff for making this happen!

















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