

thought process \* \* \*.” (Tr. 486), the Florida Standards are unequivocal in their demand for records *documenting* the thought process, “maintained in an accessible manner and readily available for review.” Fla. Admin. Code Ann. r. 64B8–9.013(3)(f)(9) (“Periodic reviews.”) (emphasis supplied). The standard of care against which Respondent’s conduct is measured is not his own personal standard, but is instead a standard generally accepted and recognized in the medical community. *Robert L. Dougherty, M.D.*, 76 Fed. Reg. 16,823, 16,832 n.11 (DEA 2011).

Moreover, when repeatedly asked to identify the location of his treatment plan in SA Grafenstein’s patient file, Respondent conceded that both the treatment plan and the treatment objective for SA Grafenstein consisted solely of the medications listed in the patient’s discharge summary.<sup>115</sup> (See Tr. 470–72; see also Gov’t Ex. 10 at 1.) A plain reading of the Florida Standards, however, reveals that a medication alone cannot constitute a treatment plan. Instead, the Florida Standards provide that a treatment plan should

state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function and should indicate if any further diagnostic evaluations or other treatments are planned \* \* \*. [T]reatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment. Fla. Admin. Code Ann. r. 64B8–9.013(3)(b). At a minimum, Respondent’s treatment plan for SA Grafenstein lacks: (1) “objectives that will be used to determine treatment success” and (2) “indicat[ions of whether] any further diagnostic evaluations \* \* \* are planned.”

*Id.* Respondent’s refusal to acknowledge these deficiencies is incompatible with a finding that Respondent has accepted responsibility for his past misconduct. In addition, regarding his prescribing of Xanax to SA Grafenstein without first inquiring when SA Grafenstein had last taken that controlled substance, Respondent stated that “I don’t agree that by me not doing that that was [not] preventing the diversion of controlled substances.” (Tr. 481.) Respondent’s comment indicates that in similar circumstances involving real patients exhibiting warning signs of abuse or diversion, Respondent would likely repeat the same course of conduct in the future. Respondent’s evidence fails to overcome the rebuttable presumption that “past performance is the best predictor of future performance \* \* \*.” *Medicine Shoppe—Jonesborough*, 73 Fed. Reg. at 387 (citing *ALRA Labs, Inc. v. DEA*, 54 F.3d 450, 452 (7th Cir. 1995)).

Respondent’s testimony at hearing provided additional indications that he believes the Florida Standards do not necessarily apply to him and that he might not comply with them in the future. As noted above, Respondent failed to discuss the risks

and benefits of the controlled substances he provided to SA Cortes (Tr. 482–83; see Gov’t Ex. 14 at 8), in violation of Florida Administrative Code Rule 64B8–9.013(3)(c). His testimony suggested that he did not engage in such a discussion during SA Cortes’s initial visit, but that he might on a subsequent visit. (See Tr. 483.) When asked if the Florida Standards contained an exception for the first visit, Respondent testified “[i]t could be a matter of style or what have you in terms of how you do things with the initial visits and follow-up visits and so forth.” (Tr. 484.) Yet Respondent later acknowledged that “[t]here’s no particular exemptions here for the first visit.” (Tr. 484.) Respondent barely acknowledges that he violated the informed consent provision of the Florida Standards, much less accepts responsibility for the violation and promises future compliance.

Similarly, Respondent acknowledged on cross-examination that he failed to document a treatment plan in SA Saenz’s patient record (Tr. 490–91, 492), but also stated: “I think you keep on using and harping on treatment plan in regards to being an issue. An appropriate treatment care [sic] was delivered for this acute injury without question.” (Tr. 491.) Respondent’s statement is not consistent with accepting responsibility for his violation of Florida Administrative Code Rule 64B8–9.013(1)(b) (describing parameters of “appropriate documentation” to include a treatment plan); and Rule 64B8–9.013(3)(b) (contemplating a “written treatment plan”). To the contrary, Respondent’s testimony reflects an attempt to trivialize his noncompliance.

Additional examples of Respondent’s failure to accept responsibility for past misconduct exist but further elaboration is unnecessary. In summary, Respondent’s testimony reflected an overall lack of admission of his past misconduct with respect to his prescribing practices, let alone acceptance of responsibility. In light of the foregoing, Respondent’s evidence as a whole fails to sustain his burden to accept responsibility for his misconduct and to demonstrate that he will not engage in future misconduct. I find that Factor Five weighs in favor of a finding that Respondent’s continued registration would be inconsistent with the public interest.

#### V. Conclusion and Recommendation

Under Factors Two, Four and Five of 21 U.S.C. § 823(f), I recommend that Respondent’s DEA COR BC8677746 be revoked on the grounds that Respondent’s continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. §§ 824(a)(4) and 823(f).

Dated: September 29, 2011

Timothy D. Wing  
Administrative Law Judge

[FR Doc. 2012–23058 Filed 9–18–12; 8:45 am]

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## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

[OMB Control No. 1219–0054]

### Proposed Renewal of Existing Information Collection; Fire Protection (Underground Coal Mines)

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Request for public comments.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration is soliciting comments concerning the extension of the information collection for 30 CFR 75.1100–3, 75.1103–5(a)(2)(ii), 75.1103–8(b) and (c), 75.1103–11, 75.1501(a)(3), and 75.1502(a) and (b). OMB last approved this information collection request on January 8, 2010. The package expires on January 31, 2013.

**DATES:** All comments must be postmarked or received by midnight Eastern Time on November 19, 2012.

**ADDRESSES:** Comments concerning the information collection requirements of this notice must be clearly identified with “OMB 1219–0054” and sent to both the Office of Management and Budget (OMB) and the Mine Safety and Health Administration (MSHA). Comments to MSHA may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Facsimile:* 202–693–9441, include “OMB 1219–0054” in the subject line of the message.

- *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. For hand delivery, sign in at the receptionist’s desk on the 21st floor.

Comments to OMB may be sent by mail addressed to the Office of

<sup>115</sup> Respondent also stated that the treatment plan “begins with the diagnosis and \* \* \* includes the medications \* \* \* and that is the initial process of the treatment plan \* \* \*.” (Tr. 469.)

Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer for MSHA.

**FOR FURTHER INFORMATION CONTACT:** Greg Moxness, Chief, Economic Analysis Division, Office of Standards, Regulations, and Variances, MSHA, at [moxness.greg@dol.gov](mailto:moxness.greg@dol.gov) (email); 202-693-9440 (voice); or 202-693-9441 (facsimile).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Fire protection standards for underground coal mines are based on section 311(a) of the Federal Mine Safety and Health Act of 1977 (Mine Act). 30 CFR 75.1100 requires that each coal mine be provided with suitable firefighting equipment adapted for the size and conditions of the mine, and that the Secretary of Labor shall establish minimum requirements of the type, quality, and quantity of such equipment. 30 CFR 75.1100-3 requires that chemical fire extinguishers be examined every 6 months and that the

date of the examination be recorded on a permanent tag attached to the extinguisher.

30 CFR 75.1103-5(a)(2)(ii) requires that a map or schematic be updated within 24 hours of any change in the locations of automatic fire warning sensors and the intended air flow direction at these locations. This map or schematic would be kept at a manned surface location where personnel have an assigned post of duty. This provision is added to this information collection from 1219-0145.

30 CFR 75.1103-8(a) requires that a qualified person examine the automatic fire sensor and warning device systems on a weekly basis and conduct a functional test of the complete system at least once every seven days. Section 75.1103-8(b) requires that a record of the weekly automatic fire sensor functional tests be maintained by the mine operator and kept for a period of one year. 30 CFR 75.1103-8(c) requires that sensors be calibrated in accordance with the manufacturer's calibration instructions at intervals not to exceed 31 days. Records of the sensor calibrations must be maintained by the operator and

kept for a period of one year. These last two provisions are added to this information collection from 1219-0145.

30 CFR 75.1103-11 requires that each fire hydrant and hose be tested at least once a year and the records of those tests be maintained at an appropriate location.

30 CFR 75.1501(a)(3) requires the operator to certify that each responsible person is trained and that the certification is maintained at the mine for at least one year.

30 CFR 75.1502 requires each mine operator to adopt and follow a mine evacuation and firefighting program of instruction that addresses all mine emergencies created as a result of a fire, an explosion, or a gas or water inundation. In addition, this section requires mine operators to submit this program of instruction, and any revisions, to MSHA for its approval and to train miners regarding the use of the program of instruction, and any revisions to such program of instruction, after it is approved by MSHA.

This information collection addresses the recordkeeping associated with:

75.1100-3 .....	Condition and examination of fire fighting equipment.
75.1103-5(a)(2)(ii) .....	Automatic fire warning devices; actions and response.
75.1103-8(b) & (c) .....	Automatic fire sensor and warning device systems; examination and test requirements.
75.1103-11 .....	Tests of fire hydrants and fire hose; record of tests.
75.1501(a)(3) .....	Emergency evacuations.
75.1502(a) & (b) .....	Mine emergency evacuation and firefighting program of instruction.

##### II. Desired Focus of Comments

The Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to this safety standard on records of fire protection in underground coal mines. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- Evaluate the accuracy of the MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Address the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses) to minimize the burden of the collection of

information on those who are to respond.

The public may examine publicly available documents, including the public comment version of the supporting statement, at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209-3939. OMB clearance requests are available on MSHA's Web site at <http://www.msha.gov> under "Rules & Regs" on the right side of the screen by selecting *Information Collections Requests, Paperwork Reduction Act Supporting Statements*. The document will be available on MSHA's Web site for 60 days after the publication date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because comments will not be edited to remove any identifying or contact information, MSHA cautions the commenter against including any information in the submission that should not be publicly disclosed. Questions about the information collection requirements may be directed to the person listed in

the **FOR FURTHER INFORMATION CONTACT** section of this notice.

##### III. Current Actions

The information obtained from mine operators is used by MSHA during inspections to determine compliance with safety and health standards. MSHA has updated the data with respect to the number of respondents and responses, as well as the total burden hours and burden costs supporting this information collection extension request.

##### Summary

*Type of Review:* Extension.  
*Agency:* Mine Safety and Health Administration.  
*Title:* Fire Protection (Underground Coal Mines).  
*OMB Number:* 1219-0054.  
*Affected Public:* Business or other for-profit.  
*Cite/Reference/Form/etc:* 30 CFR 75.1100-3, 75.1103-5(a)(2)(ii), 75.1103-8(b) and (c), 75.1103-11, 75.1501(a)(3), and 75.1502(a) and (b).  
*Total Number of Respondents:* 549.  
*Frequency:* Various.  
*Total Number of Responses:* 294,618.

*Total Burden Hours:* 54,809 hours.  
*Total Annual Cost Burden:* \$693.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

**Authority:** 44 U.S.C. 3506(c)(2)(A).

Dated: September 13, 2012.

**George F. Triebsch,**  
*Certifying Officer.*

[FR Doc. 2012-23010 Filed 9-18-12; 8:45 am]

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## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

[OMB Control No. 1219-0082]

#### **Proposed Renewal of Existing Information Collection; Records of Preshift and Onshift Inspections of Slope and Shaft Areas of Slope and Shaft Sinking Operations at Coal Mines**

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Request for public comments.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration is soliciting comments concerning the extension of the information collection for 30 CFR 77.1901. OMB last approved this information collection request on January 8, 2010. The package expires on January 31, 2013.

**DATES:** All comments must be postmarked or received by midnight Eastern Time on November 19, 2012.

**ADDRESSES:** Comments concerning the information collection requirements of this notice must be clearly identified with "OMB 1219-0082" and sent to both the Office of Management and Budget (OMB) and the Mine Safety and Health Administration (MSHA). Comments to MSHA may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Facsimile:* 202-693-9441, include "OMB 1219-0082" in the subject line of the message.

- *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209-3939. For hand delivery, sign in at the receptionist's desk on the 21st floor.

Comments to OMB may be sent by mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer for MSHA.

**FOR FURTHER INFORMATION CONTACT:** Greg Moxness, Chief, Economic Analysis Division, Office of Standards, Regulations, and Variances, MSHA, at [moxness.greg@dol.gov](mailto:moxness.greg@dol.gov) (email); 202-693-9440 (voice); or 202-693-9441 (facsimile).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. The sinking of slopes and shafts is a particularly hazardous operation where conditions change drastically in short periods of time. Explosive methane and other harmful gases can be expected to infiltrate the work environment at any time. The working environment is typically a confined area in close proximity to moving equipment. Accordingly, 30 CFR 77.1901 requires operators to conduct examinations of slope and shaft areas for hazardous conditions, including tests for methane and oxygen deficiency, within 90 minutes before each shift, once during each shift, and before and after blasting. The surface area surrounding each slope and shaft is also required to be inspected for hazards.

The standard also requires that a record be kept of the results of the inspections. The record includes a description of any hazardous condition found and the corrective action taken to abate it. The record is necessary to ensure that the inspections and tests are conducted in a timely fashion and that corrective action is taken when hazardous conditions are identified, thereby ensuring a safe working environment for the slope and shaft

sinking employees. The record is maintained at the mine site for the duration of the operation.

This information collection addresses the recordkeeping associated with:

#### **§ 77.1901 Records of preshift and onshift inspections.**

##### **II. Desired Focus of Comments**

The Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to this safety standard on records of preshift and onshift inspections of slope and shaft areas of slope and shaft sinking operations at coal mines. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

- Evaluate the accuracy of the MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and

- Address the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses) to minimize the burden of the collection of information on those who are to respond.

The public may examine publicly available documents, including the public comment version of the supporting statement, at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209-3939. OMB clearance requests are available on MSHA's Web site at <http://www.msha.gov> under "Rules & Regs" on the right side of the screen by selecting *Information Collections Requests, Paperwork Reduction Act Supporting Statements*. The document will be available on MSHA's Web site for 60 days after the publication date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because comments will not be edited to remove any identifying or contact information, MSHA cautions the commenter against including any information in the submission that should not be publicly disclosed. Questions about the information collection requirements may be directed to the person listed in