

2010 REVISIONS TO F.S. SECTION 112.18 (THE "HEART LUNG BILL") CREATE ADDED URGENCY FOR OFFICERS TO PERFECT CLAIMS IMMEDIATELY

In a major revision to Florida's Heart Lung Bill the Florida Legislature has created added confusion and uncertainty as to coverage for law enforcement personnel. As many are well aware, the addition of law enforcement and correctional officers to coverage provided by this legislation in 2002, set off a firestorm of litigation that has continued unabated. Now, in an attempt to curtail coverage for law enforcement and correctional officers, this amendment to the legislation which will eliminate any presumption of work relatedness through the use of ambiguous and undefined standards. It is impossible to understate the significance of these changes to anyone attempting to bring a claim for hypertension or heart disease after July 1, 2010.

First the new law provides that for all claims occurring on or after July 1, 2010 an officer will be presumed *not* to have incurred hypertension or heart disease in the line of duty if the officer deviated in "material fashion from the prescribed course of treatment" of his or her personal physician. There is no time limit as to when the doctor may have "prescribed the treatment" thus leaving the officer to wonder if he or she may have failed to heed a doctor's advice years ago that could now come back to defeat a claim. Furthermore the officer, even if he or she remembers that they may have failed to follow a doctor's advice, will have no way of knowing whether the failure amounts to a "material departure" as anticipated by the statute. The breadth of this loophole means that every officer who brings a claim can expect a witch hunt through a lifetime of medical records by defense attorneys hoping to find some basis to defeat the claim. Once discovered, a failure to follow doctors' orders to lose weight, or stop smoking, will become the unwelcome focus of any case.

While the new law does not define what a material departure is, it does provide some direction in this regard. For instance, the failure of the officer to follow medical advice, or take prescribed medication, must be demonstrated to have resulted in a significant aggravation of the claimed condition and resulted in disability or increasing the need for medical treatment.

Notwithstanding the apparent moderating impact of this language, most employers will be able to easily hire medical experts that will support an argument that the failure of the officer to follow medical advice created the required "significant aggravation". Once triggered, this reverse presumption will make it nearly impossible for an officer to prevail with regard to a heart disease or hypertension claim.

Finally, the new law restricts the application of the Heart Lung Bill to officers who have actually "made a claim" prior to retirement. This is an extremely important change for the following

reason. After the 2002 amendments went into effect it was discovered that many officers were not aware of their legal rights to benefits under the Heart Lung Bill. Countless officers retired following heart bypass operations, and other medical procedures for heart disease and hypertension. Many of those officers were successful in making claims after retirement by showing that the employer knew of the heart disease condition, but failed to place officers on notice of their legal rights. This new provision will shut down this loophole and insure that retired officers will not be able to pursue claims *even if they were unaware of their legal rights!*

All law enforcement officers should have a working knowledge of the Heart Lung Bill and these recent changes making the law more restrictive. It is imperative for any officer with a claim to perfect same immediately before this new law goes into effect on July 1, 2010. Questions related to Heart Lung claims should be directed to:

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