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Senate Finance Committee

Testimony of the Maryland Defense Counsel, Inc. ("MDC") in Opposition to Senate Bill 173 – Workers' Compensation – Occupational Disease Presumptions - Hypertension

Senate Bill 173 eliminates the traditional "disablement" requirement for the compensability of the presumed occupational disease of hypertension for firefighter-related professions only (*i.e.*, fire marshals, firefighting instructors, rescue squad members, and advance life support unit members) (hereinafter referred to globally as "firefighters"). It does not eliminate the disablement requirement for police officers and other public safety employees that are generally also afforded presumptions under § 9-503 of the Workers' Compensation Act.

The bill provides that a firefighter is considered to have sustained a disablement from hypertension if the firefighter has "blood pressure readings" in excess of 140 mm Hg systolic and 90 mm Hg diastolic (140/90) per National Fire Protection Association ("NFPA") standards *and* has been "required to use" prescribed medication for hypertension for at least 90 consecutive days. Notably, the bill does not require the firefighter to sustain any type of actual incapacitation from working as a firefighter.

The bill as written purports to rely upon the "2022 Edition of the National Fire Protection Association 1582 Standard on Comprehensive Occupational Medical Program for Fire Departments." However, the actual standards set forth in the NFPA for disabling levels of hypertension are not utilized in the bill. Under the NFPA 1582, hypertension is only considered a "class A medical condition," which is one that "would preclude a person from performing as a member in training or emergency operational environment," if the person has either (a) uncontrolled or poorly controlled hypertension, or (b) hypertension with end organ damage.[1] *See* NFPA 1582 at 3.3.14.1 & 6.5.2.1(1) (2022). Uncontrolled or poorly controlled hypertension is defined by the NFPA as either:

(a) hypertension combined with end organ damage, or

(b) stage 2 hypertension (BP systolic > 160 mm Hg or BP diastolic >100 mm Hg).

[1] "End organ damage" is a complication of chronic hypertension. *See* NFPA 1582 at A.6.5.2.1 (1)(b). Examples of end organ damage include damage to the eye (retinopathy), the kidneys (nephropathy), the vascular system (stroke transient ischemic attack, peripheral artery disease) and the heart (left ventricular hypertrophy and heart failure). *See id* and A.9.5.20.1.1(2).

See NFPA 1582 at 6.5.2.1(1)(a). Neither of the above NFPA criteria are included in Bill 173 for determining "disablement" for firefighters by hypertension under the Workers' Compensation Act.

To the contrary, according to the NFPA standards, a firefighter whose medical condition meets the criteria set forth in Bill 173 is not considered disabled from participating in training or emergency operations as a firefighter.

For this reason, and others to be addressed during live testimony, the MDC respectfully requests that the Committee provide an unfavorable report on SB 173.

Finally, a copy of the NFPA sections cited above have been attached to this memorandum.

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3.3.14 Medical Condition Classifications.

3.3.14.1 ***Category A Medical Condition.*** A medical condition that would preclude a person from performing as a member in a training or emergency operational environment by presenting a significant risk to the safety and health of the person or others.

3.3.14.2 ***Category B Medical Condition.*** A medical condition that, based on its severity or degree, could preclude a person from performing as a member in a training or emergency operational environment by presenting a significant risk to the safety and health of the person or others.

6.5.2 Vascular System.

Δ **6.5.2.1** Category A medical conditions shall include the following:

(1) Hypertension

(a)* Uncontrolled or poorly controlled hypertension

(b)* Hypertension with evidence of end organ damage

(2)* Thoracic or abdominal aortic aneurysm

(3) Carotid artery stenosis or obstruction resulting in greater than or equal to 50 percent reduction in blood flow

(4)* Peripheral vascular disease resulting in symptomatic claudication

(5) Any other vascular condition that results in inability to perform one or more of the essential job tasks

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A.9.5.20.1.1 Members with prehypertension (systolic 120–139 mmHg or diastolic 80–89 mmHg), Stage 1 hypertension (systolic 140–159 mmHg or diastolic 90–99 mmHg), or stage 2 hypertension (systolic 160 mmHg or greater or diastolic 100 mmHg or greater) should be referred to their primary care physician for evaluation, lifestyle modification, and/or treatment.

(1) Members with stage I hypertension whose BP returns to either prehypertension or normal with lifestyle modification can return to an annual medical evaluation. For members with long-standing stage I hypertension whose BP has not been reduced, additional evaluation for possible end organ damage should be considered, including any or all of the following:

(a) Complete patient history for symptoms of heart failure (e.g., shortness of breath upon exertion) or transient ischemic attacks (TIAs)
(b) Dilated eye examination for retinopathy
(c) Blood creatinine measurement for nephropathy
(d) Tests for left ventricular hypertrophy (Use of the resting ECG to detect left ventricular hypertrophy is insensitive, e.g., 5 percent sensitivity, so echocardiogram is the currently accepted test for diagnosing left ventricular hypertrophy.)

(2) Chronic hypertension can damage the eye (retinopathy), the kidneys (nephropathy), the vascular system (stroke, TIA, or PAD), or the heart (left ventricular hypertrophy and heart failure). These hypertension complications are known as end organ damage. The cardiac and vascular complications are associated with an increased risk of sudden incapacitation and sudden cardiac death (Koren et al. 1991). With proper evaluation, lifestyle modification, and/or treatment, these complications can be avoided. Lifestyle modification includes weight reduction, dietary plan, reduction in dietary sodium, an increase in aerobic physical activity, and moderation in alcohol consumption [Chobanian 2003].

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Δ **A.6.5.1.2(9)** These conditions can result in the inability to perform job functions due to limitations of endurance.

A.6.5.2.1(1)(a) Uncontrolled or poorly controlled hypertension increases the risk of a sudden cardiac or cerebrovascular event. A sudden cardiac or cerebrovascular event would cause sudden incapacitation, which would interfere with the safe performance of essential job tasks. Uncontrolled or poorly controlled hypertension can be defined as the presence of end organ damage *[see A.6.5.2.1(1)(b)]* or stage 2 hypertension (BP systolic >160 mm Hg or BP diastolic >100 mm Hg). Individuals with stage 1 or stage 2 hypertension should be referred to their primary care physician for evaluation, lifestyle modification, and/or treatment. Patients with pre-hypertension should be counseled about appropriate lifestyle modification(s). After appropriate and successful management of stage 1 or stage 2 hypertension, a candidate can be re-evaluated after at least 1 month's time.

A.6.5.2.1(1)(b) Chronic hypertension can damage the eye (retinopathy), the kidneys (nephropathy), the vascular system (stroke, transient ischemic attack, peripheral artery disease), and the heart (left ventricular hypertrophy, heart failure). These hypertension complications are known as end organ damage. The cardiac and vascular complications are associated with an increased risk of sudden incapacitation and sudden cardiac death (Koren et al. 1991). Unfortunately, cardiac complications are frequently asymptomatic, and valid screening tests are not fast or inexpensive. Therefore, determining which candidates to screen for cardiac complications [such as ECG for left ventricular hypertrophy (LVH) or a measurement of left ventricular ejection fraction for heart failure] should be based on the severity and the duration of hypertension.