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The California Applicants' Attorneys Association vowed Tuesday to keep up its legal battle against "deep cuts in injured workers' permanent disability compensation" approved by Gov. Arnold Schwarzenegger's administration.

CAAA issued a press release in response to a ruling last week by the Workers Compensation Appeals Board (WCAB) rejecting a challenge to the Permanent Disability Rating Schedule effective Jan. 1, 2005.

"The board's decision in injured worker Joey Costa's case broke no new legal ground, leaving the schedule in place, but not ruling that the schedule is legal and appropriate," CAAA said in the press release.

CAAA President Linda Atcherley told WorkCompCentral just after the WCAB's Dec. 7 ruling that the group would pursue its legal challenge. The press release issued Tuesday gave more details about CAAA's legal arguments.

"The opinion in the *Costa* case has not ended this dispute," CAAA said. "Other injured workers' cases raising the issue of the validity of the Permanent Disability schedule are set for trial throughout the state, and the evidence in those cases will meet the standards set out in the *Costa* decision," Atcherley wrote.

CAAA went on to say that four studies, including one by the insurance industry's own ratings bureau, have found the Schwarzenegger administration's ratings reduce compensation to permanently disabled workers by more than half. Those studies were done by a University of California, Davis professor, Commission on Health, Safety and Workers' Compensation (CHSWC); insurance defense attorney Clifford Sweet and the Workers' Compensation Insurance Rating Bureau.

"The studies have consistently shown the Schwarzenegger Administration's schedule will reduce permanent disability compensation by an average of 50% to 70%," CAAA said.

"The Schwarzenegger administration's Permanent Disability Ratings Schedule is inconsistent with SB 899, and is not based on empirical data, as the statute requires. Its continued use relegates thousands of workers to subsist on constitutionally inadequate benefits," Atcherley said. "The Schwarzenegger administration failed to link the new permanent disability ratings to wage loss by using empirical data and findings. Instead, the administration substituted policy judgments for empirical data and assumptions for empirical studies. Nowhere does the law give the administration authority to make a 'policy decision' that severely reduces permanent disability benefits to injured workers."

CAAA said that former Division of Workers' Compensation Administrative Director Andrea Hoch testified before the state Senate Committee on Industrial Relations in December 2004 that she rejected additional empirical studies before adopting a new rating schedule because of a statutory deadline of Jan. 1, 2005.

"Hoch used this deadline to justify a failure to base the new schedule on empirical data," Atcherley said. "The WCAB decision ignores that in the past (1997, for example) there was delay of more than two years past the legislative deadline in adopting a new schedule. Moreover, Ms. Hoch ignored similar statutory deadlines for setting treatment guidelines (Dec. 1, 2004). More than two years later, this deadline has not been met. The qhas been selective in hewing to deadlines, meeting them only when it harms injured workers, and ignoring them when it would benefit those injured at work."

"We disagree with the WCAB's interpretation of the testimony of Andrea Hoch and Robert Reville, and other pending cases will clarify the meaning of that testimony for the WCAB," she said in the press release.

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