

1961

## Attorney's Role in Rehabilitation of the Physically Handicapped, The

John W. Deyton

Follow this and additional works at: <https://scholarship.law.missouri.edu/mlr>



Part of the [Law Commons](#)

---

### Recommended Citation

John W. Deyton, *Attorney's Role in Rehabilitation of the Physically Handicapped, The*, 26 Mo. L. REV. (1961)

Available at: <https://scholarship.law.missouri.edu/mlr/vol26/iss3/8>

This Conference is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in Missouri Law Review by an authorized editor of University of Missouri School of Law Scholarship Repository. For more information, please contact [bassettcw@missouri.edu](mailto:bassettcw@missouri.edu).

## THE ATTORNEY'S ROLE IN REHABILITATION OF THE PHYSICALLY HANDICAPPED

JOHN W. DEYTON, M.D.\*

The bricklayer who has fallen from a ladder and who can no longer raise his arm above his waist; the metal worker who severely cuts his hand in a machine so that he can no longer hold the metal with which he has to work; the truckdriver who suffers a severe neck injury when his truck is struck from the rear by another vehicle; these are the type cases that a physical medicine specialist or physiatrist sees during the course of a day.

That many attorneys have never heard of the term "physiatrics" is not surprising because segments of the medical profession are not familiar with it. It is a relatively new term that covers the field of physical medicine and rehabilitation of the physically handicapped, whether the handicaps are severe or minor. The primary tools of treatment are the physical agents instead of surgery, internal medicine or treatment of a single system as, for example, the orthopedist, who treats bones and joints, or the dermatologist, who treats the skin. It is sometimes called the "Court of Last Resort" because many times the physiatrist begins where other treatment stops. We have heard it said: "The operation was a success, but the patient died." Or as with the bricklayer, his life was saved, his acute injuries administered to, but because he can't raise his arm, he can't make a living. He is alive, but only half so. He can't support his family with the trade he knows. But where does he go from here?

He goes to the physiatrist for rehabilitation because that is where organized medicine has laid these problems. A physiatrist is a doctor of medicine who is trained in the methods of increasing range of motion of joints, increasing strength and endurance of muscles, and teaching the patient the fullest utilization of his remaining physical capacities. This may be teaching a person to walk again, or to use an arm again, or stretching a muscle or developing substitution methods of accomplishing that which has been lost. This may be accomplished by various methods that are in the domain of physical therapy, occupational therapy or other ancillary services.

This does not mean that other specialists in medicine or that general

---

\*Physiatrist, St. Louis, Mo.; A.B., University of North Carolina, 1925; M.D., Rush Medical College, Chicago, Illinois, 1929; Post-graduate training in physiatrics, New York University, Bellevue Medical Center, 1948-1951.

practitioners do not engage in rehabilitative procedures, for they certainly do. It does mean that these problems primarily devolve upon the physiatrist because, by his training and equipment, he is prepared to meet them.

But where and how does the attorney enter the picture of rehabilitation of the physically handicapped? Let us take your client, the bricklayer. He comes to you and says: "I have been injured in an accident at the plant. My wound has been sewn up, my shoulder has been put back in place, but I can't raise my arm to work. What are you going to do for me?" The attorney is the one who is engaged to protect the rights of the bricklayer and who is familiar with his rights under existing statutes, but in addition to this necessary knowledge, he must know what rehabilitation involves medically. He must know where to refer this bricklayer so he can get his arm up and thus be able to lay brick again to make a living once more. So the attorney must first find and recommend such a doctor to this man and so refer him. The physiatrist then discovers that a traumatic bursitis has set in where the shoulder was dislocated and the man receives treatment for this. He works with both an occupational and physical therapist under the direction of the physiatrist. Through heat, ultra-sound, therapeutic exercise, massage and working with the tools of his trade, the traumatic bursitis improves and he can raise his arm to lay bricks. He can return to his former job. He can earn a living again. The attorney, through his knowledge, has helped rehabilitate a man and a family.

A little more background material is necessary for the attorney to understand what rehabilitation is and to assume his rightful role in it. Rehabilitation medicine is the third phase of medical care. *Diagnosis* is the first phase in which the doctor attempts to answer: "What is wrong with this person?" *Treatment* is the second phase in which the doctor attempts to answer: "How can the life of the patient be best protected medically?" *Rehabilitation* is the third phase in which the doctor attempts to answer: "What are we going to do with the disabled life so saved or prolonged?"

The physiatrist has studied the residuals of accident and injury, the best methods of treating injured muscles, gait training, stretching a leg or hand, treating grafted skin, and possible complications arising from injuries. He also has specialized equipment for the purpose of treating these injuries, such as paraffin bath for injured hands, whirlpool, ultra-sound, exercise units, traction units, all types of heat (dry and wet), besides techniques of therapeutic exercise and massage. It is with these tools of his trade that he is able to concentrate on the treatment of injuries.

Of great social interest, economic significance and legal importance is the well known fact that saving the life in severe injury often exhausts private funds and resources so nothing is left with which to restore the patient to his former state or to a state of usefulness in the community. Frequently, there is left a "cured" but permanently and totally disabled individual with no funds for physical rehabilitation—no means with which to put together his remaining abilities to compensate for his imposed disabilities.

Of equal social significance is the fact that the Missouri Legislature has, by statute, provided for the physical restoration of the industrially injured through workmen's compensation and other monetary benefits. For example, a young workman was involved in a serious accident with multiple injuries, among which were broken thighs, a broken neck, and paralysis in all four extremities. His life was saved only with the finest application of medical science, but his complete helplessness persisted for months. Private funds, except for the wealthy, would have been exhausted. But the Rehabilitation Board of the State of Missouri brought the young man under physical restoration, and in slightly more than a year he was able to walk again with one leg brace and on crutches, to take care of all his daily needs, to live again at home, and assist his wife in raising the family. Eventually he was enrolled in vocational training in preparation for a new livelihood. This could not have been accomplished for him without the benefits of workmen's compensation and the control of the Rehabilitation Board of the State of Missouri.

Often financial benefits under medical entitlement are not utilized beyond the point of definitive treatment demands, and rehabilitation practices, for the most part, are subsequent to definitive life savings procedures. Too often, even intelligent individuals suffering from permanent physical residuals of illness or accident will stop short of regaining maximum available function. Too often these may say: "It's too bad I lost my arm, or leg, or broke my back, or can't walk, or am blind, but there's nothing to do about it now." But there is something to do about it, namely, physical rehabilitation; the injured person may obtain an artificial leg or arm and be trained in how to use it well; he may obtain braces and learn how to walk in them; or he may change occupation and learn something for which physical ability remains.

A dancer with a broken back may never earn again by dancing, but she will not be handicapped for taking shorthand or typing in a wheel chair. A physical education teacher with paralyzed legs may never teach

physical education again, but he can take a refresher course and switch over to teaching history or English.

But one need not resort to the residuals of the very severe accidents to demonstrate the value of rehabilitation. Lost mobility and strength, resulting from fractures, often can be materially improved. The function of the crushed hand can be increased by both trial and training or adaptive equipment. The low back strain, so great a problem in industry today, can be relieved enough or worked around so as to prevent continuing disability. Most accidents in industry are not the severe dismembering type with catastrophic residuals. Most injuries, such as the traumatic bursitis in the bricklayer's arm, or the partially immobilized hand of the metal worker, are much less severe. If physical rehabilitation is utilized, the injured workman is able to return to the same job, with less loss of time. There will also be a higher percentage of workers returning to the same job, as well as salvaging for new and different occupations those individuals who cannot physically return to the same type of work.

The attorney can protect the rights of those who come under his jurisdiction by exploring every avenue and possibility of bringing rehabilitation services to those with disabilities. He can see that medical benefits are utilized, that the facilities of agencies, public and private, are made available to the handicapped, that injured workmen, entitled to the benefits of compensation, receive them to the fullest extent for the security of dependents as well as the workman, and that social, vocational and educational opportunities are made available to all his clients where the need for them is indicated.

In the area of workmen's compensation, Missouri has an exceptionally good compensation plan with which attorneys should be familiar. There is one provision that cannot be repeated too often, namely the special recognition of the value of physical rehabilitation and financial inducement for its utilization. This is in the form of ten dollars a week additional compensation provided to injured workmen receiving physical restoration at approved facilities.<sup>1</sup> By statute, a Board of Rehabilitation has been created to sponsor and supervise physical restoration of the industrially injured.<sup>2</sup> It consists of three members of the State Industrial Commission and the Director of the Division of Compensation. This Board is empowered to inspect, certify and publish lists of medical facilities where physical res-

---

1. § 287.141 (3), RSMo 1959.  
2. § 287.141 (1), RSMo 1959.

toration procedures are available that meet the Board's specifications. If the facilities at which the patient is undergoing treatment meet its standards, an additional ten dollars compensation per week may be awarded. This is paid from the second injury fund and thus in no manner can be reflected in increased compensation costs of a given employer, for all contribute to the second injury fund.

How can an attorney insure the benefits of rehabilitation medicine to his disabled clients? This can be achieved by setting up for each such client as a standard order of procedure an inventory of the various areas and ancillary services that will answer such questions as:

*Has the client received all the services which can lessen his disability or teach him to live better with it?* One gentleman, a pressman, had apparently received maximum benefits in the treatment for multiple fractures, and in fact, was lucky to be alive even though he had a long leg brace on one leg. He was referred to the physiatrist. It was noted that no attempt had been made to discard the brace. By means of stretching and strengthening, the physiatrist was able to eliminate it in three months.

*Can he be improved by a physical appliance such as an artificial limb, a brace, a wheel chair, or adaptive equipment tailor-made to his specific handicap?* A young man, working his summer vacation at the loading dock of a department store, suffered a femoral nerve paralysis, not at work, but at play. Of course, he could not work with a knee that buckled. When told that if he would wear a knee-locking brace for six to eight months his muscle would regain its strength, life took on a different meaning. With the brace, he was able to walk. In three weeks, he was going to dances with his girl friend, and in six months and three weeks, he was able to discard the brace.

*Has he been referred to the specialist in rehabilitation medicine for evaluation of remaining abilities balanced against disabilities?* It is seldom indeed that a disability is so great that there is nothing remaining. Dr. Rusk, Director of Physical Medicine and Rehabilitation in New York University-Bellevue Medical Center, had as a patient a young lady with a broken neck and extensive paralysis of all four extremities who became a designer by holding a paintbrush or a pencil in her mouth.

*Has he had physical therapy in the area of specific muscle strengthening, and stretching for increased range of motion of joints that have limited motion?* He may need gait training. If he has an appliance or artificial limb, he must be trained in its use. The days have passed when a bracemaker or limb-fitter delivers his device to the disabled, collects his

fee and says good-bye. Training is as necessary in the use of appliances and aids to the handicapped as it is in the use of specialized sports equipment such as skis or skates or a musical instrument such as a violin. No one is handed a pair of skis and told to "go up on a 192 foot tower, put them on and come down." It would be almost certain suicide! No one is handed a violin and expected to play Beethoven's Concerto in D Major without long and arduous training and practice. But with adequate training either can be accomplished with great skill and precision. So it is with the use of appliances.

*Has the physically disabled client been referred to occupational therapy in addition to physical therapy?* Here, most valuable services can be rendered with multi-dimensional benefits. Take, for example, the bricklayer who needed to have his mind taken from his disability. He needed something to help his boredom, his restless days and sleepless nights, and something to prevent self-pity and depression because he could not work. He was given small items to make, things he could do that would at the same time increase the range of motion of his arm. Finally the occupational therapist gave him brick to work with, small walls to build, ever increasing the height of the walls, until one day, he was able to build them high enough to return to work. Thus occupational therapy may be used for observation, evaluation and assessment of capacities, and as a pre-vocational profile.

*Will he be able to engage in the same occupation after his disabling illness or accident as he did before?* If not, what can be done to place him back in society on a self-supporting basis? If the answer to the last question is not apparent, then your client should be referred to a counseling psychologist or a vocational counselor for evaluation. Perhaps by means of vocational training he can enter a new occupation to become independent again either physically or economically or both. The house painter, who fell from a scaffold, suffered a compression fracture of the vertebra and was thereafter unable to paint, found through psychological counseling that he was best qualified for real estate sales and management. As a result, he has returned to school to become proficient in this new field of endeavor and there is every chance of his success.

*Has a social case study been conducted?* A permanent disability affects not just a part of the body as a limb or back, not just the disabled himself, but also his family, his wife, his children, father, mother and dependents who lose his support. The community loses a self-supporting citizen, the company he worked for loses a trained and efficient craftsman. Training a new man to take his place is expensive, time consuming and disrupts pro-

duction. So the remote effects of disability may touch many facets of society and in no manner are limited to the disabled alone.

*Can he be improved by treatment, training, appliances or self-help devices?* If he is in that unfortunate group of severe physical residuals that preclude any objective other than self-care, then seek such an answer. If he can't reach the floor, perhaps it will be possible to construct for him a "reacher" or a hook on one end of a dowel pin to retrieve such articles as can be hooked up, and a magnet in the other end to recover metallic objects. Can he dress himself in standard clothes or can standard clothes be so altered that he can dress himself, such as putting zippers up and down the legs of trousers? Can he take care of his bath and toilet needs? What can be done to make him self-sufficient in these areas? This is probably the most vulnerable area of major physical disability. More personal dignity is lost from deficiencies in the area of toilet and bath care than in any other except sex. Many is the person who, because of inability to bathe or use toilet tissue, resorts to a defense mechanism of remaining in bed where baths are given to him and bed pans served without loss of pride. But assistance at the commode cannot be accepted without loss of personal dignity. Much can be done in these areas of deficiencies by retraining, by special equipment and devices and by modifications of apparel.

*Has he had the maximum benefits of treatment, therapy and ancillary services associated therewith?* If the "stiff" finger of the metal worker has not had as much motion restored as possible, then maximum benefits have not been reached. If the weak leg cannot endure a day's work, the answer is the same, and further attempts to strengthen it to the hilt of its capacity should be made. If the low back strain still "talks back" and interferes with work, referral should be made, for most of them can be helped.

*Has he been prepared to live better with himself and his family?* These services, pin-pointed to overcome the deficiencies in inherent daily activities referred to above, can be obtained through physical medicine at the hand of the rehabilitation nurse, one of the most important members of the rehabilitation team.

Only by such orderly searching inventory can one be sure the disabled has had all the benefits of the third phase of medical care, rehabilitation, and that all his rights have been explored and all his benefits secured. The attorney is the logical one to guard these benefits and to protect these rights. He may be able to lead the family doctor in charge of the case into avenues and productive endeavors that might not have been explored had it not been for his sagacity.