

# Medical Legal Forum: Choosing an Expert Witness: a Lawyer's Perspective

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Although many lawyers might wish that they could simply testify for themselves, medical malpractice cases must be proven or defended through expert testimony. Therefore, selecting the "right expert" for each case is paramount.

Generally speaking, an expert is anyone who is qualified through training, skill, and knowledge to aid the jury in understanding the evidence. However, several characteristics can set an expert apart. The following highlights some of those sought-after qualities.

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## Be A Teacher:

The primary task of the expert witness is to educate the jury. In medical-legal cases, most jurors will not just be unfamiliar with the subject matter; they will not have thought about biology or anatomy since high school. Accordingly, an expert must be able to explain the medicine in a way the jury can understand.

Most doctors are well-practiced in teaching their patients about medicine, but that typically involves a one-on-one conversation between the physician and the patient. In that setting, the audience (the patient) is more engaged and can ask questions, allowing both sides to confirm that the discussion has been understood. Most states do not permit jurors to ask witnesses questions. Therefore, the expert must anticipate areas where the medicine is particularly challenging and find ways to keep the jury engaged.

Additionally, research shows that a significant portion of the jury will be visual learners. Thus, experts should be prepared to identify and utilize visuals to help the jury understand their testimony.

## Meet the Jury Where They Are:

The best experts are effective communicators. In addition to using clear, simple language, an expert should make the medical concepts more comprehensible for the jury. One proven way to do that is through analogies or comparing the material to a concept the jury will be familiar with. For example, in brachial plexus cases, experts may describe the nerves as telephone wires capable of carrying messages from the brain to the arm. Or, by way of other examples, an expert can emphasize that an important fac-

tor in a brain injury, like real estate, is location, location, location. Putting the medicine in a context the jury already understands can have a profound impact on reaching them.

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## Be Willing to Dig In:

An expert is someone who possesses mastery over the material. The material in this context is the medicine and the facts of the case. An extremely well-credentialed expert can nevertheless torpedo a case by failing to have control over the facts in evidence. This not only exposes the expert to cross-examination but, more importantly, erodes the expert's credibility and, thus, the party's case. Therefore, experts must be willing to work with the attorney to have mastery over the facts of the case.

## Be Reachable:

I thought lawyers were busy until I started working with doctors. A good lawyer will be sensitive to an expert's schedule. However, lawyers are under strict deadlines often beyond their control, so it is critical for the expert to make themselves available for consultations at key junctures of the case. This is particularly important before the expert's deposition, the defendant's deposition, and, often, the other side's expert's deposition.

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## Have Conviction:

I recently thanked an expert for his hard work preparing for his trial testimony. He responded, "I wouldn't have done it if I did

not believe so strongly that it was important.” Not only was that statement meaningful to my client and me, but it also confirmed why the testimony was so compelling. Juries can sense when the expert believes in the cause.


**Be Demanding:**

It is the lawyer’s job to make the expert’s life easier. But they cannot always anticipate an expert’s needs. Experts should tell the lawyer what would help them do their job – whether that is gathering information through discovery, creating visuals, or providing summaries of the evidence. Everyone benefits when an expert is empowered with the information and materials they need.

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**Disclaimer:**

**This column does not give specific legal advice, but rather is intended to provide general information on medicolegal issues. As always, it is important to recognize that laws vary state-to-state and legal decisions are dependent on the particular facts at hand. It is important to consult a qualified attorney for legal issues affecting your practice.**