

Becoming a Forensic Audiologist: What You Need to Know

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According to the American Heritage Dictionary, 5th Edition, the term “forensic” conveys the use of science or technology in the investigation and establishment of facts and evidence in a court of law. A forensic expert witness is an individual with knowledge, training or education, and experience who is engaged to provide testimony and render opinions and conclusions concerning legal actions in their selected field.

Audiologists are trained in acoustics, hearing science, balance, physiology and neurophysiology, site of lesion diagnostics, diseases, disorders, and syndromes, teratogenic agents, noise and blast exposure, head and neck trauma, rehabilitation, standard of care, electronics and hearing devices, and other disciplines. In forensic audiology, the expert is frequently opining on the relationship between hearing, hearing loss, tinnitus, hyperacusis, balance, and auditory processing to injury and causation, employment, access, disability, impairment, handicap, rehabilitation, and outcome. The opportunities to work in forensic audiology are many as subspecialties in medical audiology, industrial audiology, pediatric audiology, educational audiology, manufacturing, cochlear implants, and rehabilitation have their own audiences.

Forensic audiology cases span the entire gamut of legal concerns, including administrative law (government agencies), constitutional law (human rights and civil liberties), workers compensation, civil tort law (personal injury), and criminal law. Experts in audiology opine on a variety of cases involving accidents, assaults, OSHA regulations, ADA and discrimination, education disputes, fitness for duty, product liability, hearing aids and other devices, malpractice, criminal actions, and more. To the forensic audiologist, this means bringing a level of knowledge, skills, and abilities that must meet the highest standards and can withstand scrutiny and legal challenges from opposing counsel, other experts, and the courts. Expert witnesses know that testimony and reporting will be dissected by other experts in audiology, ENT, neurotology, neurology, psychiatry, psychology, education, and acoustical engineering. Furthermore, the expert should assume the opposing counsel will carefully review the audiologist’s CV, publications, transcripts from prior depositions and trials, as well as newspaper interviews, online information, websites, health grades, and reviews. For audiologists with expert-level abilities, being able to navigate the forensic arena is achievable and challenging.

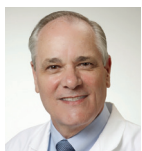


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ARE YOU AN EXPERT?

The first hurdle is to be capable of following the criteria of the Daubert standard. In the legal field, measures of expert status and admissibility for federal and many state courts came about from the U.S. Supreme Court case, *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993). From this case, the Federal Rule of Evidence 702 was adopted, with several cases further defining this premise. A Daubert challenge from the opposing counsel can come about if it is believed the expert did not (a) have scientific, technical, or other specialized knowledge to help the trier of fact understand the evidence or determine a fact in issue; (b) provide testimony based on sufficient facts or data; (c) present testimony that used reliable principles and methods; and (d) reliably apply the principles and methods to the facts of the case. Although these are not surprising requirements to most audiologists, and challenges from opposing counsel are not typical, a challenge to one’s competency can be avoided by following some reasonable guidelines. Not all newcomers will have the same level of legal experience. An audiologist with years of experience, a well-designed CV, and the right credentials can be an expert witness.

According to Robert A. Doby, MD, in his book *Medical-Legal Evaluation of Hearing Loss* (Singular, San Diego, 2001:393), the expert qualifications and guidelines of behavior should include (a) valid licensing and board certification; (b) specialty appropriate knowledge about the subject matter; (c) relevant continuing education; (d) engagement in clinical practice of their specialty and knowledge of the standard of care; (e) being prepared to disclose the percentage of time worked as an expert witness vs. clinical or research activities; (f) the ratio of plaintiff to defendant cases; and (g) fees. The expert should make it clear to either counsel the forensic fee pays for the expert’s time, not his or her opinion.



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PROFESSIONAL & ETHICAL CONSIDERATIONS

A qualified expert witness is expected to be independent, unbiased, and not advocate a position or appear partisan in any legal proceedings. The expert witness must be prepared to disclose the basis for their testimony, opinions, and conclusions. These include generally accepted opinions in the expert's field, clinical experiences, evidence-based guidelines, and the current literature. At no time is it appropriate for an expert witness to provide misleading, untruthful, or erroneous findings, which can lead to criminal prosecution for perjury, civil lawsuits for negligence, and actions against their professional license.

The audiologist must be prepared to be cross-examined at depositions or in court and provide a level of competency and explanation that codifies the case and satisfies the educational and information needs of the legal professionals, the jury, and the court. Although the expert witness may be engaged by the plaintiff's or defendant's legal counsel, the forensic specialist must remain independent. The expert witness should not accept cases when payment is contingent upon a specific outcome. Protecting one's professional integrity and reputation is critical. Whether a positive or negative opinion is rendered, this decision is never influenced by the appointing party and without regard to the consequences, just the facts.

LEGAL FEES

Although reimbursement for clinical fees is primarily based on the inept Medicare fee schedule, legal fees do not follow this standard. In contrast, legal protocols, reporting, depositions, court appearances, and liability are outside of the requirements for clinical practice and are much more rigorous and at times contentious. Fees are generally divided by time in five-minute increments for specific duties such as attorney consultations, records review, patient examinations, report writing, testimony, summary judgment, travel, and educational presentations. Unlike clinical practice, legal consultations are similar to attorney fees. Before participating in legal consultation, a fee schedule and an engagement contract should be developed and applied in all cases. An easy way to control fees by time is to include any testing during the patient examination. To review suggested fees for medical expert witnesses and obtain training, audiologists can consult expert witness firms for more information.

CREATING THE REPORT

One of the most important aspects of being an expert witness is report writing. There is a significant difference between the clinical report and the independent medical examiner's report. Primarily, the report should follow an accepted format, concisely present information, and render conclusions with documentation in support of the expert's opinion.

In preparation to provide expert testimony, the audiologist should review the merits of the case, assess the material facts, review and interpret the available records, provide a case-appropriate diagnostic evaluation, document the salient features, provide an assessment of the case, render an opinion, and write an unbiased report. The report must be accurate, informative, and educational with a clearly stated opinion to allow the attorneys to understand, appraise, and critique the information. The components of a report typically follow the needs of the reader to understand and evaluate the merits of the case. One example is to start the report with a statement of the complaint and the expert's opinion. This can be followed by the patient interview, a section reviewing pertinent records, audiological diagnostic test results, questionnaire results, and interpretation, then the expert's conclusions connecting the dots. A nexus must be provided if the court is to make a well-informed decision. Next is a discussion of the claimed problem and reference to current knowledge, practice, and acceptable research. Once these facts are reported, a review of the patient's impairment (AMA-WPI; *Hearing Journal*. 2015; 69[2];40. doi: 10.1097/01.HJ.0000480890.25214.bb), disability, handicap, and outcome with or without therapy is critical. This should include estimates for hearing devices, replacements, sound therapy, rehabilitation, annual retesting, and adjustments, etc., as well as recommendations for CBT or referral to other specialists. The final paragraph briefly restates the case and the expert's opinion. The final component is the bibliography, which supports the conclusions and opinions.

Working in the medical-legal field is a rewarding vocation for those with expert skills who want a challenge and merit-based compensation. As audiologists, we work to help people using science-based methods and principles. We assess causation, diagnose hearing loss, prescribe treatment, and provide counseling and rehabilitation daily. These skills are an asset when considering forensic audiology, which can be one of the best practice additions for a trained clinician, teacher, or researcher. [\[1\]](#)