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Alabama

Can an expert medical witness testify at trial as case specific hearsay? Are there any limitations?

Rule 703 of the Alabama Rules of Evidence states that “[f]acts or data [relied upon by an expert medical witness] that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert’s opinion substantially outweighs their prejudicial effect.” Alabama’s appellate courts have not imposed any limitations on “case specific hearsay” at trial.

Arkansas

Can an expert medical witness testify at trial as case specific hearsay? Are there any limitations?

Ark. R. Evid. 703 defines the permissible basis of opinion testimony by experts. That rule provides that case specific hearsay may be an acceptable basis for expert medical witness opinion. Ark. R. Evid. 703 (“If of a type reasonably relied upon by the experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.”). Arkansas courts have ruled that the lack of personal knowledge goes to the weight of the opinion, rather than its admissibility.ⁱⁱⁱ

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California

Can an expert medical witness testify at trial as case specific hearsay? Are there any limitations?

In California, *People v. Sanchez* (2016) 63 Cal.4th 665 (a criminal case that applies in civil cases) is the leading case on this issue. Generally, under *Sanchez*, an expert witness cannot testify as to case-specific hearsay, even if it formed the basis of his or her opinion. But there are nuances and exceptions.

The *Sanchez* Court explained: “An expert may still *rely* on hearsay in forming an opinion, and may tell the jury *in general terms* that he did so.” (*Id.* at 685-686 (italics in original).) But “[w]hat an expert cannot do is relate as true case-specific facts asserted in hearsay statements, unless they are independently proven by competent evidence or are covered by a hearsay exception.” (*Id.* at 686.)

“Case-specific facts are those relating to the particular events and participants alleged to have been involved in the case being tried.” (*Id.* at 676.) However, general medical principles based on a doctor’s education, training, and experience are **not** case-specific – this is known as the “Galen rule”. The *Sanchez* court emphasized: “A physician is not required to personally replicate all medical experiments dating back to the time of Galen in order to relate generally accepted medical knowledge that will assist the jury in deciding the case at hand.” (*Id.* at p. 675.)

The California Supreme Court recently clarified that the opposing party can draw out the case-specific hearsay on cross-examination. (*People v. Valencia* (2021) 11 Cal.5th 818, 837 at fn. 16 [“The opposing party is, of course, entitled to challenge the foundation by cross-examination or the introduction of contrary evidence. The challenge may be brought in *limine*, renewed through a motion to strike, or attacked as unreliable in argument to the jury.”]; *cf. People v. Veamatahau* (2020) 9 Cal.5th 16, 32 [“If the expert professes to know little about the source material or cannot explain why it is a credible fount on which to rest the proffered testimony, that would be a basis for the party opponent to discredit the testimony (via cross-examination or by offering its own expert) or for the trial court to exclude it.”].)

This ruling is consistent with the pre-*Sanchez* case, *People v. Campos*, where the Court of Appeal held that “[a]n expert witness may not, on direct examination, reveal the content of reports prepared or opinions expressed by non-testifying experts.” (*People v. Campos* (1995) 32 Cal.4th 304, 308.

Finally, parties can stipulate to waive the *Sanchez* rule.

Colorado

Can an expert medical witness testify at trial as case specific hearsay? Are there any limitations?

Generally, an expert witness may base their opinions on inadmissible evidence, such as hearsay statements; however, those inadmissible facts may not be disclosed to the jury absent a court determination that the probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.^{xxiv} This rule balances the reality that experts often rely on inadmissible facts when forming their opinions, while preventing parties from using expert opinions as a mere conduit to present inadmissible information to the jury.^{xxv}

As a general rule, hearsay, case specific or otherwise, is by definition inadmissible in Colorado.^{xxvi} C.R.E. 703 would therefore apply to prevent an expert from relaying that evidence to the jury, even if the expert relied on it in reaching their opinion. However, any statement that qualifies as "not hearsay" under C.R.E. 802 would itself constitute admissible evidence, and therefore would not fall within Rule 703's prohibition. Likewise, any statement falling within an exception to hearsay is admissible evidence that the expert may disclose to the jury.^{xxvii} Finally, statements already admitted into evidence are not barred by Rule 703, even if those statements are technically hearsay as to the expert.^{xxviii}

The text of Rule 703 itself allows for inadmissible evidence, including hearsay, to be admitted if the court determines that the probative value in assisting the jury's opinion substantially outweighs the prejudicial effect of those facts. However, any facts or data that pass this balancing test must still meet the other requirements of Rule. 703, specifically, the facts or data must be of the kind reasonably relied upon by experts in that particular field.^{xxix}

In summary, an expert can rely on case specific hearsay in forming their opinion (assuming it is of the type experts in that field reasonably rely on), but generally cannot testify as to the substance of that hearsay. However, the expert can testify as to the substance of any statements which (1) are not hearsay (2) fall within an exception to the hearsay rule (3) have already been admitted into evidence or (4) if the court finds that the probative value of the statement in assisting the jury to evaluate the expert's opinion substantially outweighs the statement's prejudicial effect.



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Can an expert medical witness testify at trial as case specific hearsay? Are there any limitations?

Yes. Medical experts can incorporate and relate a patient's reported history as part of the assessment, diagnosis and treatment plan.

Delaware

Can an expert medical witness testify at trial as case specific hearsay? Are there any limitations?

The Delaware Rules of Evidence state:

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. Upon objection, if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

D.R.E., Rule 703. Based on this rule, Delaware courts have stated that experts can testify as to case specific hearsay. *See Frey v. Goshow-Harris*, 2009 WL 2963789 at *4 (Del. Super. Ct. Sep. 16, 2009) (stating that there were not grounds to exclude expert opinion under Rule 703 when expert “relied on other depositions, medical records and summaries of statements of various experts regarding this case in forming his opinion”); *Thomas v. Christiana Excavating Co.*, 1994 WL 750325 at *6 n.11 (Del. Super. Nov. 15, 1994) (The expert medical testimony, even assuming the V.A. records as a whole were inadmissible hearsay, was also admissible because an expert may rely on inadmissible evidence [i]f of a type reasonably relied upon by experts in that particular field”) (internal quotation marks omitted) (alterations in original).



Georgia

Can an expert medical witness testify at trial as case specific hearsay? Are there any limitations?

Yes, under O.C.G.A. § 24-7-703 a medical expert may testify about case specific facts used to form his or her opinions so long as they are of a type reasonably relied upon by experts in their field in forming opinions or inferences, even if the facts are not admissible evidence. For example, a medical expert may testify that he or she relied upon case facts obtained from uncertified medical records in reaching his or her opinion. *See Fields v. Taylor*, 340 Ga. App. 706, 710-711 (2017). However, the medical expert cannot testify as to the truth or accuracy of the statements within the records.

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Illinois

Can an expert medical witness testify at trial as case specific hearsay? Are there any limitations?

Illinois courts have held that statements made for purposes of rendering medical care are an exception to the hearsay rule. *Caponi v. Larry's* 66, 236 Ill. App. 3d 660, 676 (1992); *Greinke v. Chicago City Ry. Co.*, 234 Ill. 564, 571 (1908). Medical records are considered inadmissible hearsay, and the testimony of a medical expert does not “transform the records into substantively admissible evidence.” *Chrysler v. Darnall*, 238 Ill. App. 3d 673, 681 (1992). Expert testimony as it relates the content of medical records is admissible only to “illustrate and explain the basis of the expert’s opinion.” *Id.*

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Iowa

Can an expert medical witness testify at trial as case specific hearsay? Are there any limitations?

Iowa allows an expert medical witness to testify at trial as case specific hearsay, but there are limitations. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Iowa R. Evid. 801(c). Hearsay is not admissible at trial except as provided by the Constitution of the State of Iowa, by statute, by the Iowa Rules of Evidence or by other rules of the Supreme Court of Iowa. Iowa R. Evid. 802. Iowa Rule of Evidence 803(4) provides an exception to the hearsay rule for medical expert witnesses, which states, in relevant part:

Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause of external source thereof insofar as reasonably pertinent to diagnosis or treatment.

Iowa. R. Evid. 803(4). Iowa has well-established law recognizing a distinction between a medical expert witness who treats the patient and one who is retained solely for purposes of litigation. *Vasconez v. Mills*, 651 N.W.2d 48, 56 (Iowa 2002) (quoting *Devore v. Schaffer*, 245 Iowa 1017, 1021, 65 N.W.2d 553, 555 (1954)). Thus, Rule 803(4), stated another way, means that "a [treating] doctor may testify as to the patient's history, as an exception to the hearsay rule, because of the probability that the patient will not fabricate statements made to the physician if the patient's future treatment and well-being are at stake." *State v. Mann*, 512 N.W.2d 528, 535 (Iowa 1994). However, this exception does not apply when a medical expert witness examines a patient solely for litigation purposes. *Vasconez v. Mills*, 651 N.W.2d at 56.

Furthermore, this medical exemption is limited by the admissibility of hearsay under rule 5.803(4) adopted by the Supreme Court of Iowa in *State v. Tracy*, 482 N.W.2d 675, 681 (Iowa 1992). First, "the [treating doctor's] motive in making the statement must be consistent with the purposes of promoting treatment." *Id.* Second, "the content of the statement must be such as is reasonably relied on by a physician in treatment or diagnosis." *Id.* Absent both of these requirements, an expert medical witness cannot testify at trial using case-specific hearsay.



Kansas

Can an expert medical witness testify at trial as case specific hearsay? Are there any limitations?

A medical expert witness may testify at trial based on case specific hearsay if the hearsay falls into one of the exceptions identified in K.S.A. § 60-460. The most notable of these exceptions as it relates to medical experts are previous statements of person present, depositions and prior testimony, statements of physical or mental condition of declarant, business records, and learned treatises.

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Louisiana

Can an expert medical witness testify at trial as case specific hearsay? Are there any limitations?

Yes. An expert medical witness can testify at trial to case specific hearsay. The general caveat is that testimony relying on hearsay is only allowed if the hearsay relied upon is of the type that is reasonably relied upon by similar experts in the particular field in forming opinions on the subject being testified. Louisiana Code of Evidence article 703.

Further, the facts or data underlying the testimony of the expert witness must be (1) first-hand knowledge; or (2) facts or data presented to the expert at trial.

If an expert is relying upon hearsay evidence to base their opinion, the court can limit the presentation of the hearsay evidence to the jury in civil cases. More specifically, the expert may testify to his opinions or inferences and give reasons therefore without disclosure of the underlying facts or data. However, the disclosure of those facts may be required to be disclosed on cross-examination.

Lastly, relevant evidence may be excluded if the court finds that the evidence's probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. To put the probative value of the testimony at issue before the court, a party must file a pre-trial motion to exclude the testimony at issue and/or assert the proper objection at trial.

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Maryland

Can an expert medical witness testify at trial as case specific hearsay? Are there any limitations?

Yes, an expert medical witness may testify at trial as to case specific hearsay in Maryland. Parallel to Rule 703 of the Federal Rules of Evidence, Maryland Rule 5-703 codifies the permission which allows an expert to base their testimony on first-hand knowledge, hearsay, or a combination of the two.^{xxxiii} Allowing an expert to rely on case specific hearsay in their reports and testimonies. Such evidence, like in most jurisdictions, does not come in as substantive evidence but only to explain the factual basis for the testifying expert's opinion.^{xxxiv}

In addition, experts are allowed to opine on facts or data that is inadmissible if the court deems that the probative value of the information for the jury outweighs its prejudicial effect.^{xxxv}

However, the hearsay for which the expert bases its opinion on must be proved by and based upon admissible substantive evidence, and similarly the relevance of their hearsay testimony must be based on the same.^{xxxvi} The Rule further gives an opposing counsel the full freedom to challenge the expert in a cross-examination explore all factors of an expert's opinion.^{xxxvii}



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Can an expert medical witness testify at trial as case specific hearsay? Are there any limitations?

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Under some circumstances, within the discretion of the trial judge, an expert medical witness can testify at trial about case specific hearsay exceptions, the prejudicial impact of the statement, and the relevance of the testimony.



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Michigan

Can an expert medical witness testify at trial as case specific hearsay? Are there any limitations?

MRE 703 requires the facts or data in a particular case upon which an expert bases an opinion *must be in evidence*. Hearsay would be permitted, so long as it falls under an exception, which would allow the hearsay to be *admitted into evidence*.

The evidence the opinion(s) are based on may be admitted before or after the expert testifies. If the expert testifies prior to the admission of evidence, and the necessary evidence is not later admitted, his/her testimony could be excluded/struck.

Minnesota

Can an expert medical witness testify at trial as case specific hearsay? Are there any limitations?

Yes, under certain circumstances. The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. Minn. R. Evid. 703(a). If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. *Id.* The facts and data generally must be independently admissible to be received upon direct examination. Minn. R. Evid. 703(b). But, it can admitted on direct exam when good cause is shown and the underlying data is particularly trustworthy, for the limited purpose of showing the basis for the expert's opinion. *Id.* It may also be inquired into on cross-examination. *Id.*

In a comment to Rule 703, the committee included reference to the following explanation by the United States Supreme Court Advisory Committee, which stated:

. . . (A) physician in his own practice bases his diagnosis on information from numerous sources and of considerable variety, including statements by patients and relatives, reports and opinions from nurses, technicians and other doctors, hospital records, and X-rays. Most of them are admissible in evidence, but only with the expenditure of substantial time in producing and examining various authenticating witnesses. The physician makes life and death decisions in reliance upon them. His validation, expertly performed and subject to cross-examination, ought to suffice for judicial purposes.

Id. (citing Supreme Court Advisory Committee Note).

Mississippi

Can an expert medical witness testify at trial as case specific hearsay? Are there any limitations?

MRE 703 provides that an expert may base an opinion on facts or data in the case if the experts in the particular field would reasonably rely on those kinds of facts in forming an opinion on the subject, even if the facts are not admissible. So, a medical expert can include hearsay in his or her opinion subject to the above criteria. This would have to be addressed on a case-by-case basis depending upon what the hearsay is and whether experts in that particular field would rely on the hearsay evidence in forming the opinion.



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Can an expert medical witness testify at trial as case specific hearsay? Are there any limitations?

Experts, not just medical experts, may rely on hearsay to form their opinions if it is the sort reasonably relied on by experts in the field and the trial court finds the evidence is otherwise reasonably reliable. *Peterson v. National Carriers*, 972 S.W.2d 349 (Mo.Ct.App. 1998). However, such hearsay evidence may not be offered as independent, substantive evidence. *Id.*

Montana

Can an expert medical witness testify at trial as case specific hearsay? Are there any limitations?

In Montana, experts are permitted to rely on inadmissible evidence. The hearsay must be the type that “experts in the field rely upon and such reliance is reasonable.” Todd v. Baker, 2012 U.S. Dist. LEXIS 77375. “Medical professionals reasonably may be expected to rely on self-reported patient histories. Such histories provide information upon which physicians may, and at times must, rely in their diagnostic work’.” Id. Therefore, testimony is permitted if it is the type generally relied upon in the field.

Nebraska

Can an expert medical witness testify at trial as case specific hearsay? Are there any limitations?

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him before the hearing. NEB. REV. STAT. § 27-703. In some circumstances, an expert's opinion may be based on hearsay, if is the "type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject. . .". NEB. REV. STAT. § 27-703. However, a testifying expert may not merely act as a conduit for hearsay. *Stukenholtz v. Brown*, 267 Neb. 986, 989, 679 N.W.2d 222, 225 (2004); *see also Koehler v. Farmers Alliance Mut. Ins. Co.*, 252 Neb. 712, 718-19, 566 N.W.2d 750, 754 (1997); *Stang-Starr v. Byington*, 248 Neb. 103, 110-11, 532 N.W.2d 26, 31 (1995).

Oklahoma

Can an expert medical witness testify at trial as case specific hearsay? Are there any limitations?

Whether an expert medical witness can testify at trial regarding case specific hearsay is governed by 12 O.S. § 2703.

Section 2703 provides that if the facts or data relied upon by the expert witness is “of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted.” Under this statute, an expert may rely on information considered to be hearsay. *See Lewis v. State*, 1998 OK CR 24, ¶ 19.

If the expert witness relies upon facts or data that are otherwise inadmissible, Section 2703 provides that they “shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert’s opinion substantially outweighs their prejudicial effect.”



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Oregon

Can an expert medical witness testify at trial as case specific hearsay? Are there any limitations?

An expert may base his or her opinion on facts or data supplied by third parties. Or. Evid. C. 703. However, that does not authorize any witness to put in inadmissible evidence as the basis for the opinion. *State v. Knepper*, 62 Or. App. 623, 626, 661 P.2d 560 (1983) (concluding it was reversible error to permit State's expert witness to disclose to the jury excludable evidence that formed the basis of the expert's opinion).

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Pennsylvania

Can an expert medical witness testify at trial as case specific hearsay? Are there any limitations?

Yes. “An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted.” Pa.R.E. 703. When an expert testifies about the underlying facts and data that support the expert’s opinion and the evidence would be otherwise inadmissible, the trial judge upon request must, or on the judge’s own initiative, may instruct the jury to consider the facts and data only to explain the basis for the expert’s opinion, and not as substantive evidence.

Rhode Island

Can an expert medical witness testify at trial as case specific hearsay? Are there any limitations?

There is no specific rule in Rhode Island which addresses the issue of whether a medical witness can testify at trial as case specific hearsay. Rather, documents introduced for substantive purposes must meet an exception to the rule against hearsay. See R.I. R. Evid. 803-04. If a document includes an out-of-court statement offered for the truth of the matter asserted, then both the document and the statements contained therein must each independently meet an exception. R.I. R. Evid. 805; *State v. Mallett*, 600 A.2d 273, 278 (R.I. 1991); *McKenna v. St. Joseph Hosp.*, 557 A.2d 854, 857 (R.I. 1989).

Like its federal cognate, Rule 803(4) of the Rhode Island Rules of Evidence provides a hearsay exception where a statement is made to a treating physician for the purposes of medical diagnosis. When a statement includes within it additional hearsay, each layer of hearsay must conform to an exception-to-the-hearsay rule in order to be admissible at trial. *State v. Mallett*, 600 A.2d at 278. For example, if a statement recorded in a hospital record meets the Rule 803(4) exception, it may then qualify as a business record if made in the course of regularly conducted activity. See R.I. R. Evid. 803(4); 803(6). Further, Rule 703 generally allows experts to base their opinions on the “presentation of data to the expert outside of court and other than by his own perception.” See R.I. R. Evid. 703, Advisory Committee’s Notes (*citing* Fed. R. Evid. 703, Advisory Committee’s Notes). Although Rule 703 permits an expert to rely upon hearsay in forming an opinion, the rule does not provide for unfettered admission of hearsay evidence.

Lastly, R.I.G.L. § 9-19-27 is a statutory exception to the hearsay rule that applies only to medical records. See R.I. Gen. Laws § 9-19-27. Under Section 9-19-27, medical records and bills that are certified by affidavit (in a form in compliance with the statute) are admissible evidence of (1) the fair and reasonable charge for treatment, (2) the necessity of treatment, (3) diagnosis, (4) prognosis, (5) the physician’s expert opinion as to proximate causation of the diagnosed condition, and (6) the physician’s expert opinion as to disability, incapacity or permanency, if any. *Id.* The Rhode Island Supreme Court has nevertheless made clear that “[t]he substitution of a written affidavit for live medical testimony, however, in no way relaxes the minimum requirements for the admission of competent medical testimony.” *Parrillo v. F.W. Woolworth Co.*, 518 A.2d 354, 355 (R.I. 1986).

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Tennessee

Can an expert medical witness testify at trial as case specific hearsay? Are there any limitations?

Tennessee law seems to allow an expert medical witness to testify as to case specific hearsay, though care must be taken to prevent outright hearsay from coming under the jury's consideration. In *Davenport v. Taylor Feed Mill*, 784 S.W.2d 923 (Tenn. 1990), an expert witness doctor was allowed to rely on hearsay to form his opinion, but hypothetical questions had to be used to elicit said testimony when examined by counsel. The hearsay itself must also be considered: Once reliability and trustworthiness of hearsay medical reports and tests used by plaintiff's treating physician in treatment were established, defendant's forensic physicians could give their expert medical opinion relying on the same reports and tests. *Evans v. Wilson*, 776 S.W.2d 939 (Tenn. 1989). Generally, testimony of medical experts that is based on information obtained from blood tests, x-ray tests, or similar tests not offered in evidence and made by third parties not appearing as witnesses is inadmissible as hearsay, but that rule is subject to many fluctuations depending entirely upon how case was tried and conducted. *Fidelity & Cas. Co. of New York v. Treadwell*, 367 S.W.2d 470 (Tenn. 1963). However, Rule of Evidence 703 will not allow "a testifying expert to act as the mouthpiece of a non-testifying expert by simply parroting the non-testifying expert's opinion. The opinion to which an expert testifies must be his own." *Holder v. Westgate Resorts Ltd.*, 356 S.W.3d 373,380 (Tenn. 2011). Within these restrictions, medical witnesses may testify as to case specific hearsay.

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Vermont

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Yes, an expert medical witness may testify at trial regarding case specific hearsay if this hearsay is of a type reasonably relied upon by experts in the particular field of the medical expert (e.g. reports of other medical providers), and the court determines that the probative value of the hearsay in assisting the jury to evaluate the expert's opinion substantially outweighs its prejudicial effect. Therefore, a finder of fact can take the hearsay nature of the information into account in evaluating the expert's opinion, and the hearsay does not come in as substantive evidence. V.R.E. 703 states:

“The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.

By adopting this rule, identical to F.R.E. 703 as amended in 2000, Vermont clarified that otherwise inadmissible evidence may only be considered to evaluate an expert's opinion and not as substantive evidence. See, e.g., *State v. Recor*, 150 Vt. 40, 47-48, 549 A.2d 1382, 1388 (1988). Regarding the question of whether the proponent of the opinion or inference could elicit the basis evidence during the direct examination of the expert, the Vermont Supreme Court has adopted one strand of the early federal case law, allowing the proponent to elicit the otherwise inadmissible basis “[i]f of a type reasonably relied upon by experts in the particular field.” *Id.* Additionally, the expert must have in fact relied upon the facts or data in forming the opinion. *Everett v. Town of Bristol*, 164 Vt. 638, 639, 674 A.2d 1275, 1277 (1996) (mem.). However, the Court has expressed two important caveats. First, “V.R.E. 703 is not to be treated as either an auxiliary hearsay exception, or as a backdoor to an expansive reading of existing hearsay exceptions.” *Recor*, 150 Vt. at 48, 549 A.2d at 1388. Second, the court must consider the relevance of the otherwise inadmissible evidence in the formulation of the opinion and balance the potential prejudice if the jury is allowed to hear the evidence which might be used for an impermissible purpose. *State v. Valley*, 153 Vt. 380, 387, 571 A.2d 579, 582 (1989).

Washington

Can an expert medical witness testify at trial as case specific hearsay? Are there any limitations?

Yes. Washington applies standard ER 703 rules that permit experts to rely on evidence that experts in their fields would consider in reaching their opinions, even if that evidence itself is not admissible. The rule states “If of a type reasonably relied upon by experts in the particular filed in forming opinions or inferences upon the subject, the facts or data need not be admissible into evidence.” The evidence does not come in, and cannot be offered substantively, simply because it was reviewed or relied upon by an expert (e.g., police report), but the opinions are not subject to exclusion simply because it is based on or utilized otherwise inadmissible evidence to form the basis of the opinion.

West Virginia

Can an expert medical witness testify at trial as case specific hearsay? Are there any limitations?

Under Rule 702 of the West Virginia Rules of Evidence, “if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.” W. Va. R. Evid. 702(a).

In some cases, restricting an expert to testify as to the basis of an opinion may leave it unsupported with little way to evaluate its correctness. In those situations, the expert may testify to evidence even though it is inadmissible under the hearsay rule, but allowing the evidence to be received for this purpose does not mean it is admitted for its truth. It is received only for the limited purpose of informing the jury of the basis of the expert's opinion and therefore does not constitute a true hearsay exception. *Doe v. Wal-Mart Stores, Inc.*, 210 W. Va. 664, 676-77, 558 S.E.2d 663, 675 (2001) (quoting John W. Strong, *McCormick on Evidence* § 324, at 356 (5th ed. 1999)).

Wyoming

Can an expert medical witness testify at trial as case specific hearsay? Are there any limitations?

Wyoming courts have not considered this issue in the context of “case specific hearsay” or the analysis set forth in *People v. Sanchez*, 63 Cal. 4th 665 (2016). That said, the Wyoming Supreme Court addressed the issue in *McGinn v. State*, 928 P.2d 1157 (Wyo. 1996). There, the Court allowed a psychiatrist to testify about a conversation they had with the defendant’s sister, even though the sister did not testify at trial. The Court reasoned that the testimony was admissible pursuant to W.R.E. 703, but approved a limiting instruction. *Id.* at 1162-63. Moreover, the court may rely on any hearsay exception to allow an expert to testify about case specific facts. *Owen v. State*, 902 P.2d 190, 195-96 (Wyo. 1995), *overruled on other grounds*, *Sweets v. State*, 2013 WY 98, 307 P.3d 860 (Wyo. 2013).