

Profile: Erik Peterson

Medical-malpractice specialist says it's a collegial legal community, very different from PI

By Stephen Ellison

Many lawyers have stories about the one critical skill or philosophy they learned on the job that transformed their careers – that all-important "they didn't cover that in law school" teaching moment. For Erik Peterson, such an epiphany came to him in the form of a question: Who do you want to serve?

Peterson, a partner with Bostwick & Peterson in San Francisco, found the answer early in his career while working his first job defending doctors in medical malpractice suits for a firm in San Diego. He was exposed right away to plaintiffs and their attorneys and realized quickly he identified more with the people across the aisle.

"I really kind of felt sympathetic, and I thought I really need to be on the other side," Peterson said. "I actually tried cases defending doctors and hospitals, and you put all your heart and soul into trying a case, and it's late nights and weekends, and at the end of the day, I was realizing I would rather get back to the service thing. It seems a little bit corny, but it's true. It's much better for me. I feel better serving plaintiffs when I spend that kind of time and that effort trying to make a change in their life."

Indeed, Peterson's change of course has brought life changes to the many people he's represented over the past three decades. His record of success includes several seven-figure and even a couple of eight-figure results, and he's been ranked among the top medical-malpractice lawyers in the United States.

Focusing a good part of his practice on medical malpractice cases is a rarity in California because of the Medical Injury Compensation Reform Act (MICRA) capping general damages (pain and suffering) awards at $250,000, and Peterson explained while it's unfortunate his firm has to turn away many potential clients, there are still cases that make sense.



Peterson

"We turn down many, many cases. And most of them are just maybe a risk of the procedure – it may not be malpractice. But some of them are really outstanding," he said. "Most cases in medical malpractice are good cases but are capped at $250,000, and for economic reasons, we can't take a case like that. We sort of focus exclusively on cases with economic damages, meaning things like significant lost wages, for instance. A wage earner who's got a wife and kids who's had a stroke and can't work anymore. Also, the cost of care for a brain-injured child, same thing … that's uncapped. And that could be millions of dollars."

The small world of medical malpractice

Peterson also was quick to note the medical malpractice "community" is a very collegial one. The lawyers for both sides tend to see a lot of each other, and they tend to work together on cases. One of the things he learned from Jim Bostwick when he first joined the firm is that, in medical malpractice, they can get the cases reviewed by experts quickly, get them all buttoned up early and then present them to the defense attorneys with the notion that here's the case, here are the witnesses, and the doctor did cause the problem; hoping all the while that the defense attorneys report the plaintiff's version of the case to the insurance carrier first. The medical records, which the attorneys get up front, "pretty much" tell the entire story, he said, "Right at the beginning of the litigation."

"On the other hand," Petersen explained, "Personal-injury cases are kind of like peeling layers, a little bit at a time over a long, long period, with motions of discovery, fighting over documents. We get the whole thing up front, get the case evaluated, and then we can present a case right away to the defense attorneys."

California dreaming

Peterson was raised in San Clemente, which he dubbed a "small beach town," where he grew up surfing and playing water polo. For his undergraduate studies, he attended Westmont College in Santa Barbara, majoring in economics, with a plan for law school "at some point."

His father was a patent-copyright-trademark lawyer, which Peterson was quick to point out is completely different than the work he does. But he admitted it would be quite a coincidence if his dad being a lawyer had no impact on him choosing a career in law.

Peterson also attributed his natural competitiveness to his foray into law. But the capper may have been while he was still at Westmont and had the chance to watch a high-profile trial right there in town.

"When I was in college I watched the RJ Reynolds trial in Santa Barbara," he said. "I watched most of that trial, and I thought: This is interesting; I'd love to do this. I'd love to be in the courtroom. And I'm not shy about public speaking. Thinking back over 30 years now, 35 years, I suppose that played a role in my decision making."

After graduation, though, Peterson took some time off from schooling and instead went to Hawaii, where he worked on the crew of a sailboat for about a year. He lived on the boat and made $50 a day plus breakfast and lunch, he said.

"It was kind of a cool thing. I did that for about a year, and it was mostly just heaven, living and working on the water," he recalled. "Then I got a bit of island fever, and I knew I was going to go to law school. So that's when I got serious about applying to USF Law School."

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While toiling away at the defense firm in San Diego, Peterson started inquiring about working the other side, and a friend of a friend contacted Bostwick, who then called Peterson and asked that he interview for a job in San Francisco. A couple of weeks later, he had the job, knowing that Bostwick was operating on a completely different level than he'd ever seen.

"He was going to help me develop my practice," Peterson said. "And, obviously, right off the bat, my career got a huge tailwind. It's been so great working with him because it's been one long master's class."

Collegial atmosphere

Peterson, indeed, learned quickly that Bostwick and his firm had a much different approach than he was used to. When he arrived in San Francisco, Peterson explained, he was probably 90 percent combative and 10 percent collaborative in terms of working cases. He was more of a "brawler," he said. Bostwick had to kindly ask him if he could flip that ratio because his new boss was more 90 percent collaborative and 10 percent combative. That collaborative approach is what makes their firm special, Peterson said.

"We tend to really work with defense lawyers," he said. "I learned as a defense attorney the process in terms of how they operate. There are buttons to push with a client to get them to say, 'Hey, yeah, this is a good case; we should settle the case.' Because in medical malpractice cases tend to settle."

The reality, Peterson said, is that more of medical malpractice cases are settling at mediation, a trend that became popular 15 years ago, and some are even settling without mediation. With the medical records in hand, as well as all the details of the plaintiff's case, if there aren't any concerns, the lawyers get on the phone with each other and agree to bypass mediation and talk about it themselves. Peterson said he had a mediation scheduled in March for one of his cases, and both defense attorneys called him and said: "Hey, can we just talk a week beforehand?"

It's that type of collegial atmosphere that differentiates medical malpractice cases from typical personal-injury cases, he said.

REDIRECT:

Getaway Spot: Family room, after that, anywhere there's surf or mountain-bike trails
Go-To-Music or Artist: Lenny Kravitz, Yes, Stone Temple Pilots
Recommended Reading: Kristin Hannah, Bernard Cornwell
Dream Job: Navy fighter pilot
Words to Live By: "Who you are is defined by what you're willing to struggle for." – Mark Manson

It's a doctor, not a drunk driver

"When you're suing a health care provider, it's difficult in most cases to get courageous because, you know, your client had a medical problem and needed help," Peterson explained. "There's a doctor there trying to help. The doctor made a mistake, maybe even a very big mistake. But the doctor is a doctor or the nurse is a nurse, and they're trying to help. It's not like some drunk driver blasted into a bus stop, where everyone kind of goes, 'Oh my god!' So, it's a soft sell.

"But that said, every medical malpractice case is different because you've got a different venue, you've got different medicine, you've got different defense attorneys, you've got different clients with different needs," he continued. "So, every case gets a different game plan. The one thing that's a common denominator is it's usually a fairly soft sell."

Memorable cases

In one of his more memorable cases, Peterson said he represented a woman who was in her 20th week of pregnancy and developed a urinary tract infection. Her doctor prescribed antibiotics, and when she went to the pharmacy to get the prescription filled, the pharmacy told her erroneously she was allergic to that particular antibiotic and didn't give it to her. They told the woman they would call her OBGYN and get it figured out, but they never placed the call, Peterson said.

Less than five days later, his client was in intensive care, where she spent 10 days and nearly died, Peterson said. Fortunately, the woman recovered, but her child suffered a severe brain injury, born at 32 weeks with spastic quadriplegia.

"In that case, the issue was the pharmacy messed up because … they never got back in touch with the OBGYN, and there's some question whether or not the OBGYN should have been in touch with the pharmacy. So, they both ended up settling the case."

Peterson obtained a $17 million settlement, which was a record at the time, and the woman and her family, who had been living in the projects, were able to buy a small house with a backyard and pay for therapy for her child.

In another case, Peterson represented a 42-year-old father who woke up in the middle of one night with facial paralysis and slurred speech, and when he tried to get up, he fell to the floor. His wife called the paramedics, and the paramedics reported to the nurses in the hospital that the man was having a stroke. The ER doctor saw him and discharged him, and after the man went home, later in the day, he had a full-blown stroke.

"And he's shut in, which means he's fully aware, he's very cognizant of everything that's going on around him, but he can't move his body," Peterson explained. "He was in a skilled nursing facility … in the Central Valley, and the parents are from the Midwest? All they want to do is get him out of there, and they end up losing their house. Anyway, the case settled, they're able to go buy a new house and they modified the home. Just yesterday, she called me crying, saying they brought him home. So that was pretty good."

Life's guardrails

When he's not working, Peterson still gets in the water as much as he can. He surfs at Ocean Beach in San Francisco and swims a couple times a week at the Dolphin Club, an open water swimming

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and rowing club. He also enjoys coaching baseball, taking in a basketball game on the weekends, mountain biking and most of all spending time with his family.

For young lawyers, Peterson said it's important they find a part of their life where they don't identify as a lawyer.

"I call it life's guardrails," he said. "It's a very possessive profession, and you can find yourself at times in the middle of a stressful time at work, and you can take it home, and it can interfere with your relationships and your health. It takes a while to learn how to do it, but you've got to put up guards, just to kind of protect yourself from letting your health decline and letting it run your life. It's allowed me to be a better lawyer down the road."

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