

## **JUDY & GARY SUSSER**

**3294 N.W. 63rd Street  
Boca Raton, Florida 33433**

**Telephone: (561) 869-0053  
Facsimile: (561) 735-3964**

July 26, 2005

Clerk, The Florida Supreme Court  
500 South Duval Street  
Tallahassee, FL 32399-1927

Re: Case No. SC05-1150

Dear Justices,

This letter attempts to justify our opposition to the Grimes Petition, now before the Florida Supreme Court. It appears we are now at the most crucial point of our battle on behalf of all Florida families like ours, who are victims of medical malpractice. In particular, we speak out on behalf of our son, Adam Susser, who will suffer for the rest of his life. Adam has been the primary source of our passion to speak out on behalf of all victims.

Over five (5) years ago, my wife Judy Susser, was designated a high-risk obstetrical patient. Judy was in her mid 40's, had developed gestational diabetes, and was pregnant with twin boys(A & B). The sac holding (A)dam broke after 33-½ weeks. The sac holding (B)randon remained intact. Judy was admitted to a local hospital just after at 1AM on Thursday July 6, 2000. We were not seen by any Dr. until some eight (8) hours after we got to the hospital. Later on that morning , we were then told that Dr. Kerry Kuhn who had followed my wife all of those months was out of town on vacation and a Dr. Greenspan, who had never met my wife, was there to tend to my wife and our unborn sons. We were also told that the high risk specialists who had followed my wife for the past months were not allowed in the hospital as they had no "privileges" there.

For the first 24 hours Judy was on a liquid diet and they had given her a steroid shot to mature the babies lungs. They had planned on doing a C-section within 24 hours.

Unfortunately, Dr. Greenspan adamantly refused to perform a C-Section. She claimed she spoke with Dr. Kuhn who wanted to deliver the babies himself, as they were both in the vertex position and ideally suited for a vaginal delivery. At our insistence & demand, the hospital called in their high risk specialist to see Judy. This Dr. Edwards stated that no c-section was necessary. They also stated that since both boys were in the vertex position, head down, they could be delivered vaginally on Sunday morning, July 9th, if everything was OK. As we were concerned as to why the boys were not to be delivered within 24 hours after the water broke, the specialist ordered a high level

diagnostic ultrasound test be done. The specialist assured us that she would let us know of the results of this diagnostic test ASAP.

On Saturday morning, July 8th, this diagnostic ultrasound was performed. Despite our repeated inquiries, we were not told of the results for the next 24 hours. The radiologist, Dr. Mata never told us the results. The radiologist never advised the specialist Dr. Edwards of the results, even though he ordered the test nor did he advise Dr. Greenspan.

We never heard from or saw the specialist, Dr. Edwards ever again after the night of July 7th. She abandoned us and our sons, never to return.

On Sunday mid morning, July 9th we were told by Dr. Greenspan that the test showed that everything was fine. This doctor again refused to perform a c-section despite my wife's plea for a c-section claiming that she felt she was suffocating our son. She was arrogant and nasty and left us by saying that we would have to wait for our main doctor to return that night. The reason: the original doctor wanted to set an age record for the vaginal delivery of twins on a woman over the age of 45.

The diagnostic ultrasound taken on the morning of July 8th was highly abnormal. On a scale of 1-10, the result was a 4. No points were awarded for fetal tone and fetal movement. This was never told to us. The report was typed up Monday after our sons were born Monday morning, July 10th. As of Saturday morning Adam was in great distress and had nothing left to breathe, as his sac was empty.

On Sunday, July 9th, Adams heart monitor clearly showed a repeated non-reassuring fetal heart rate. Dr. Greenspan still refused to perform a C-Section. She wanted the main doctor to come in to deliver our sons vaginally. When the main doctor finally came in on Sunday night, July 9th, he also told us that everything was fine and that a C-Section was not necessary. He also lied and told us that the July 8th ultrasound showed no problems.

Not until July 10th, was Judy taken into an operating room. The operating room did not have the properly operating fetal heart monitor. Adam was not monitored at all for 1 full hour before delivery. In the operating room the doctor again refused to do a C-Section, saying he still had plenty of time. The anaesthesiologist had been called in, but he was not there for 20 minutes. We waited for him as Adam was still suffocating and not being monitored.

On the morning of July 10th, 2000 Adam was delivered vaginally, but he was born dark blue, not breathing, not moving. Adam had been severely asphyxiated. When the neonatologist, Dr. Richard Beach saw this, he did not intubate the baby to revive him. Fortunately the nurses called in a respiratory technician who arrived and within second intubated Adam and saved his life.

While in the NICU for two weeks, they told us Adam was fine. They did an ultrasound and told us there was no brain damage. I confronted Dr. Beach as I saw what he had done & had not done, and he was very nasty also. He said the child was fine.

Adam and his twin brother Brandon were born more than 4 days after their mother's water broke. It seems the doctors were more concerned about setting the age record for the vaginal delivery of twins than protecting the health of our twin sons.

Adam's asphyxiation was so severe that he was totally blind, as the occipital area of his brain was destroyed. He is a cerebral palsy quadriplegic. He can't use his arms, hands or legs. He takes liquids via a stomach feeding tube. We had made a perfect baby. Adam's devastating damage was the direct result of medical negligence and the reckless disregard of his safety. Adam is a person trapped forever in a body that will cannot move at his command.

After three (3) months we learned that Adam had been severely harmed and that the doctors misled to us. Knowing what we saw and went through, you would think it would be easy to find a lawyer to take the case. Not so.

A) The delivery room record written by the neonatologist Dr. Beach wrote that Adam was born pink active & alert, with no distress and Apgar scores of 7 & 8.

B) The delivery room Dr. Kuhn's notes never mentioned Adam being born at all, just mentioned that Brandon was delivered;

C) The delivery room record has no mention of the anaesthesiologist being there at all, not to mention we waiting 20 minutes for him to show up as Adam was slowly choking to death;

D) Dr. Kuhn, the delivery doctor added in an obscure place that he had examined my wife on July 7th, but he was never in town.

E) Dr Greenspan stated in the records that she had closely examined the fetal monitor strips and that Adam was OK. The fetal monitor strips, were of course, missing/misplaced for a large part of the case; when finally found (after the threat of sanctions) they showed that in four (4 )plus days, the monitor was only working 20% of the time and that Dr. Greenspan had no idea of how the baby was doing, as she rarely was around to check in.

What should have been a slam dunk case was a nightmare. On top of the misleading & contradictory records, the neonatologist Dr. Beach testified under oath that Adam had left the hospital fine and that we, the parents, must have harmed the baby. Dr. Beach was so arrogant that when he was asked by Judy as to why Adam was constantly screaming in the NICU, he stated: "What do you expect, his father is a lawyer".

. The anaesthesiologist stated under oath at his deposition that he was never there in the delivery room, as no one ever called for him and he knew nothing about Adam's birth. Only my wife and I could place him there, as the records protected him.

Our family was thrust into a nightmare and our beautiful son Adam will never be right. We have spoken out state wide and nationally on this medical malpractice. We are very strongly opposed to the Grimes Petition seeking to engulf into the Rules Regulating the Florida Bar, an extremely misguided interpretation of the provisions of Amendment 3. Amendment 3 concerns itself with the claimant's right to receive certain damages in medical liability claims, and does not by its express terms place a limitation on attorneys' fees. Our lawyer spent 2 years of his life and over \$100,000.00 in presenting our case. He was opposed by six (6) defense attorneys, the misleading medical records, and the arrogance of the defendant doctors, one of whom the anaesthesiologist, we could not even sue, because we had no proof, other than our word, that he was even there.

There is a medical malpractice crisis in this state. The crisis is that there are too many bad doctors like the ones in Adams case and they continue to practice. They faced no discipline. They act with arrogance and impunity and when finally their lies are uncovered and the evidence is amassed, they threatened bankruptcy.

Doctors in this state can bury their mistakes without fear of lawsuits if they kill an elderly or young person who has no spouse or dependent children. Caps on damages are now not enough. If Amendment 3 caps contingency fees, it is less likely that a typical client like us will be able to hire their choice of legal counsel in a medical negligence case. Any individuals existing rights under the current Florida Bar rule to contract with an attorney of his or her choice and to waive the existing provisions of Rule 4-1.5 should not be changed.

Some clients with meritorious malpractice claims will be effectively precluded from retaining competent, experienced attorneys like ours. To impair or negate a victim's right to retain their choice of an attorney offends several very fundamental constitutional rights we hold dear. The freedom each individual citizen has to contract for legal services with the attorney of his or her choice must remain inviolate.

Amendment 3 was nothing more than an attempt by the FMA/AMA to stop the good lawyers who take these egregious medical malpractice cases. Please do not let the doctors and FMA/AMA get away with stopping attorneys from taking on cases like ours, by making these cases economically undesirable.

Respectfully submitted,

Gary Susser, Esq., father of Adam Susser  
TFB #0622710

I hereby certify that a true and correct copy of the foregoing letter has been mailed by U.S. mail to the Executive Director of The Florida Bar, John F. Harkness, Jr., 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, and Stephen H. Grimes, Post Office Drawer 810, Tallahassee, Florida 32302 on July 26, 2005.