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5. Howard Awand was a medical consultant who referred personal injury patients to doctors and personal injury clients to attorneys in return for payments of money.

6. Melodie Simon became paralyzed following complications that arose out of routine spine surgery performed by defendant **KABINS** and Dr. Thalgott on August 3, 2000.

7. Melodie Simon had a potential medical malpractice claim against defendant **KABINS** as a result of his actions and inactions during the course of her care and treatment.

8. Defendant **KABINS** and Dr. Thalgott believed that Melodie Simon could sue them for her injuries.

9. Noel Gage was an attorney licensed to practice law in the State of Nevada.

10. In 2001, Melodie Simon hired Noel Gage to represent her in the pursuit of medical malpractice claims against any medical care providers responsible for her injuries.

11. Noel Gage owed Melodie Simon the fiduciary duty to represent her in a way that was honest and free from corruption, self-dealing, deceit, fraud, and undisclosed conflicts of interest.

12. Defendant **KABINS**, Noel Gage, Howard Awand and Dr. Thalgott had mutually beneficial financial arrangements among themselves that conflicted with Melodie Simon's financial interests in her medical malpractice claims.

The Scheme to Defraud

13. Defendant **KABINS** and others known and unknown to the Grand Jury, aided and abetted by each other, devised, intended to devise, and participated in a material scheme and artifice to defraud and to obtain money and property from Melodie Simon and Dr. Burkhead through false, fraudulent and material pretenses, representations, promises, and half-truths, and to deprive Melodie Simon of her intangible right of honest services as set forth below.

1 14. The purpose and object of the scheme and artifice was to prevent Melodie
2 Simon from suing defendant **KABINS** and Dr. Thalgott and thereby protect and conceal the
3 secret cooperation and financial arrangements that existed among the co-schemers. The
4 scheme and artifice defrauded Melodie Simon and Dr. Burkhead of money and property and
5 deprived Melodie Simon of the honest services of Noel Gage.

6 15. It was part of the scheme and artifice that defendant **KABINS** altered medical
7 records and created false and fraudulent medical records.

8 16. It was part of the scheme and artifice that defendant **KABINS** and Awand
9 corruptly referred lucrative personal injury cases to Gage to influence him not to sue
10 defendant **KABINS** and Dr. Thalgott and to compensate him for not doing so.

11 17. It was part of the scheme and artifice that defendant **KABINS** and Dr.
12 Thalgott secretly cooperated with Awand and Gage to give false and misleading testimony
13 during depositions to deceive others into believing that Dr. Burkhead was solely responsible
14 for all of Melodie Simon's injuries and that neither defendant **KABINS** nor Dr. Thalgott was
15 responsible for any of her injuries.

16 18. It was part of the scheme and artifice that defendant **KABINS** and Dr.
17 Thalgott secretly cooperated with Awand and Gage to obtain false medical evidence against
18 Dr. Burkhead and others in order to make it appear that Dr. Burkhead and others were solely
19 responsible for all of Melodie Simon's injuries and that neither defendant **KABINS** nor Dr.
20 Thalgott was responsible for any of her injuries.

21 19. It was part of the scheme and artifice that defendant **KABINS** and the co-
22 schemers concealed from Melodie Simon and Dr. Burkhead the true nature of the conduct
23 of defendant **KABINS**, the true nature of the cause of Melodie Simon's injuries, the viability
24 of her potential malpractice claims against defendant **KABINS** and Dr. Thalgott, and the true
25 nature of the cooperation, agreements and financial arrangements among the co-schemers.

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Overt Acts

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2 25. Defendant **KABINS** and others committed the following overt acts, among
3 others, in furtherance of the conspiracy.

4 A. In or about September 2001, defendant **KABINS** caused Awand to
5 refer a potentially lucrative medical malpractice case to Gage in order to influence him to not
6 to sue defendant **KABINS** and Dr. Thalgott.

7 B. In or about the fall of 2001, defendant **KABINS** and Dr. Thalgott
8 secretly met with Awand and Gage to discuss the Simon case.

9 C. In or about December 2001, Dr. Thalgott arranged for a doctor known
10 to Dr. Thalgott to act as a medical expert in the Simon case.

11 D. On or about January 1, 2002, Awand wrote a letter to defendant
12 **KABINS** wherein he confirmed a secret agreement between Gage, Awand, and defendant
13 **KABINS**, asked defendant **KABINS** to have others contact the expert whom Dr. Thalgott
14 had located, and discussed payments from **KABINS** and Thalgott to Awand for providing
15 them with malpractice protection.

16 E. In or about January 2002, defendant **KABINS** caused a report to be
17 prepared for Gage relating to the medical care and treatment provided to Simon, which
18 report contained false and fraudulent information.

19 F. On or about May 15, 2002, defendant **KABINS** falsely and fraudulently
20 testified in a civil deposition taken in Simon's case against Dr. Burkhead and others.

21 G. On or about July 24, 2002, defendant **KABINS** caused Gage to file a
22 complaint with the Southern Nevada Medical Dental Screening Panel fraudulently naming
23 Dr. Burkhead as a defendant but not naming defendant **KABINS** as a defendant.

24 H. In or about June 2003, defendant **KABINS** caused Gage to file a
25 complaint in the Eighth Judicial Court, in for Clark County, State of Nevada, fraudulently
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1 naming Dr. Burkhead and others as defendants, but not naming defendant **KABINS** as a
2 defendant.

3 I. In or about June 2004, defendant **KABINS** caused Dr. Burkhead and
4 his malpractice insurer to agree to settle the lawsuit.

5 J. In or about October 2004, defendant **KABINS** caused Dr. Burkhead's
6 malpractice insurer to pay Simon approximately \$2,000,000 to settle the suit against Dr.
7 Burkhead.

8 K. On or about the dates set forth in Counts Two through Eight below,
9 defendant **KABINS** caused the mailings described therein to be made.

10 All in violation of Title 18, United States Code, Section 371.

11 **COUNTS TWO THROUGH EIGHT**
12 **Mail Fraud/Honest Service Fraud**
13 **(Title 18, United States Code, Section 1341 and 1346)**

14 26. The Grand Jury incorporates paragraphs 1 through 21 as paragraph 26 of
15 this Indictment as though set forth fully herein.

16 27. On or about the dates set forth below, in the State and Federal District of
17 Nevada, defendant **KABINS**, for the purpose of executing the scheme and artifice, and
18 attempting to do so, did knowingly cause to be placed in a post office and authorized
19 depository for mail matter to be sent and delivered by the United States Postal Service, and
20 deposited and caused to be deposited a matter to be sent and delivered by a private and
21 commercial interstate carrier, and knowingly caused to be delivered by mail and private and
22 commercial interstate carrier according to the direction thereon, the following items, with
23 each mailing or delivery constituting a separate count, as enumerated below:

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1	<u>Count</u>	<u>Date</u>	<u>Description</u>
2	Two	1/16/04	Pleading, "Order Setting Civil Jury Trial," with Certificate of Mailing signed by "Joyce Brown-Judicial Secretary."
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4	Three	2/9/04	Letter from Wm. Killip (attorney for Dr. Burkhead) to Dave Reeter, Interstate Insurance Group, Chicago, Illinois, enclosing copy of "Court's Order Setting Civil Jury Trial. Notation: "Via facsimile and First Class Mail."
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8	Four	3/10/04	Letter from Wm. Killip to Dave Reeter, Interstate Insurance Group, Chicago, Illinois, recommending settlement. Notation: "Via facsimile and First Class Mail."
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11	Five	6/28/04	Letter from Wm. Killip to Gary L. Myers, enclosing settlement agreement and release.
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13	Six	10/8/04	Letter from Wm. Killip to Dr. Burkhead, enclosing settlement agreement and release.
14			
15	Seven	10/27/04	Pleading, "Notice of Entry of Order Granting Dismissal with Prejudice" in <i>Simon v. Burkhead</i> with Certificate of Mailing signed by Killip employee Sandi Rich.
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