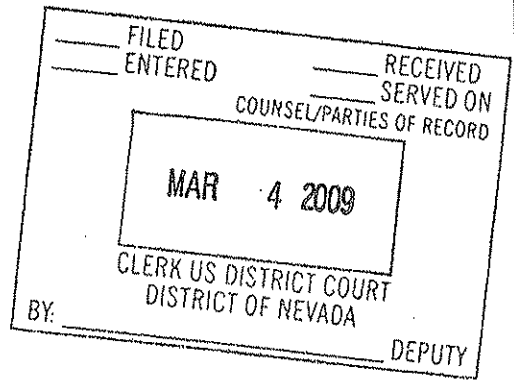


1 GREGORY A. BROWER
United States Attorney
2 STEVEN W. MYHRE
DANIEL R. SCHIESS
3 Assistant United States Attorneys
333 Las Vegas Boulevard South, Suite 5000
4 Las Vegas, Nevada 89101
(702) 388-6336



6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

8 -oOo-

9 UNITED STATES OF AMERICA,) CRIMINAL INDICTMENT
10 PLAINTIFF,) 2:09-cr- 090
11 vs.) VIOLATIONS:
12 MARK B. KABINS,) 18 U.S.C. § 371 - Conspiracy
13 DEFENDANT.) 18 U.S.C. §§ 1341, 1346 - Mail Fraud/
Honest Services Fraud
18 U.S.C. § 2 - Aiding and Abetting

15 THE GRAND JURY CHARGES THAT:

16 At all times relevant to this Indictment:

17 Background

- 18 1. Defendant **MARK B. KABINS** was a medical doctor specializing in
19 orthopaedic spine surgery.
20 2. John Thalgott was a medical doctor specializing in orthopaedic spine surgery
21 and in a partnership with defendant **KABINS**.
22 3. Daniel Burkhead was a medical doctor specializing in anesthesiology.
23 4. Melodie Simon was a patient of defendant **KABINS**, Dr. Thalgott and Dr.
24 Burkhead.

25 . . .
26 . . .

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.

26

1 20. It was part of the scheme and artifice that Gage sued Dr. Burkhead and
2 others for Melodie Simon's injuries but did not sue defendant **KABINS** and Dr. Thalgott, and
3 did, thereby, protect, conceal, and advance the financial arrangements and secret
4 agreements that existed among the co-schemers.

5 21. It was part of the scheme and artifice that defendant **KABINS** and others
6 caused Dr. Burkhead and his malpractice insurer to settle the lawsuit brought against him,
7 knowing that, as a result, Dr. Burkhead would have to pay higher insurance premiums in the
8 future.

9 **COUNT ONE**
10 Conspiracy

(Title 18, United States Code, Section 371)

11 22. The Grand Jury incorporates paragraphs 1 through 21 as paragraph 22 of
12 this Indictment as though set forth fully herein.

13 23. From in or about August 2000, to in or about October 2004, in the state and
14 federal District of Nevada,

15 **MARK B. KABINS,**

16 defendant herein, did conspire, confederate, and agree with others, known and unknown to
17 the Grand Jury, to commit the crime of mail fraud, in violation of Title 18, United States
18 Code, Sections 1341 and 1346.

19 **The Object of the Conspiracy**

20 24. The object of the conspiracy was to devise, intend to devise, and participate
21 in a material scheme and artifice to defraud and for obtaining money and property by means
22 of false, fraudulent and material pretenses, representations, and promises as to Melodie
23 Simon and Dr. Burkhead, and to deprive Melodie Simon of her right to the honest services
24 of her lawyer, Noel Gage, as set forth in paragraphs 1 through 21 of this Indictment.

Overt Acts

1
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
26

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:

24

25

26

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."
3			
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."
5			
6			
7			
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."
9			
10			
11	Five	6/28/04	Letter from Wm. Killip to Gary L. Myers, enclosing settlement agreement and release.
12			
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.
16			
17			
18	. . .		
19	. . .		
20	. . .		
21	. . .		
22	. . .		
23	. . .		
24	. . .		
25	. . .		
26			


<u>Count</u>	<u>Date</u>	<u>Description</u>
2	Eight	10/28/04
3		Letter from Wm. Killip to Dave Reeter, Interstate Insurance
4		Group, Chicago, Illinois, enclosing "Notice of Entry of Order"
5		and "Stipulation for Dismissal With Prejudice and Order."

All in violation of Title 18, United States Code, Sections 1341, 1346 and 2.

DATED: this 4 day of March 2009.

A TRUE BILL:

GREGORY A. BROWER
United States Attorney



STEVEN W. MYHRE
DANIEL R. SCHIESS
Assistant United States Attorneys