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## Original complainant in Abate trial takes stand

By Sam Hemingway, Free Press Staff Writer

**UPDATE 3:35 P.M.** The woman who triggered the investigation that led to the charges being filed against orthopedic surgeon Joseph Abate has taken the stand.

**UPDATE: 3:30 p.m.** -- Kris Carlson, former head of the Chittenden Unit for Special Investigations, under questioning by Joseph Abate's attorney Eric Miller, acknowledged he did not have any expertise to assess Abate's explanation during the phone call with the woman patient of why he probed her vagina with his fingers during the examination. Carlson said he found it concerning that Abate seemed to offer several different, inconsistent explanations.

"You don't understand his explanation," Miller said.  
"Which one," Carlson answered.

Carlson also disclosed under questioning that he consulted a University of Massachusetts orthopedic specialist prior to Abate's arrest in 2007 to see if what Abate did in the examination was a proper medical procedure. He said the specialist assured him the conduct was not typical, but Carlson told Miller he could not remember the specialist's name.

"That was my mistake," Carlson said.

**UPDATE: 1:20 p.m.** -- In the phone call between Abate and the woman patient, taped by police on May 25, 2007, Abate tells her "this is really weird" after she says she was uncomfortable that he had inserted his ungloved fingers in her vagina during a medical examination earlier that year.

"I don't want you to feel uncomfortable," he is heard telling her. "Oh, I feel so awful."

Abate tells her during the call that the purpose of his exam was to find the source of hip pain, and that he was trying to locate the edge of a bone in her pelvic area that might be the cause of her problem.

Later, he admits that he may have gone "too far" in his examination of her. When she asks him if she should talk to her mother about what happened, he remarks that "she'll flip" and, when the woman says she is thinking of contacting the state Medical Practice Board, he says "that would be bad."

Repeatedly, Abate tells her he feels "sicK that she is uncomfortable with what he did during the examination and reminds her that he told her the day of the examination that he felt uncomfortable, too.

She replies that she doesn't remember him saying he was uncomfortable on the day of the examination.

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Kris Carlson, former head of the Chittenden Unit for Special Investigations, testified this morning that he learned about Joseph A. Abate's alleged inappropriate touching of a woman patient in the spring of 2007, and with the woman's cooperation, arranged to have her send a series of "controlled e-mails to Abate in April and May of that year.

In Abate's e-mail responses, he told her he was willing to meet her after hours at her convenience and said he would not bill her for the sessions. "I want you to be perfect in every way so you can have a great life in the future," he wrote in one of the e-mails.

Carlson said in late May, he decided to have the woman participate in a taped phone call with Abate

Carlson said in late May, he decided to have the woman participate in a taped phone call with Abate. Asked by Assistant Attorney General Lauren Bowerman what he hoped to learn from the call, Carlson said "I wanted her to ask him why he did what he did."

The jury is in the midst of its morning break and will hear the 40-minute phone call when court reconvenes.

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A 22-year-old female patient of Colchester orthopedic surgeon Joseph Abate never spoke of having hip pain during 16 visits with a physical therapist after Abate performed knee surgery on her, the physical therapist said Tuesday.

"Absolutely not," Joyce Parsons told the jury during the second day of the trial of Abate, who is facing felony sexual-assault charges on claims he inappropriately touched seven young female patients, purportedly to determine the source of their hip pain.

Abate, through his lawyers, has defended his conduct as a proper medical procedure. Nothing in the woman's medical records refers to hip pain, but defense attorneys say she told him she suffered from hip pain.

Parsons, who works in Deerfield, N.H., said as part of her practice she evaluates the joints directly above and below the site of a surgery and detected no problems with the woman's hips.

The 22-year-old woman, who is expected to testify today, is a key witness in the case against Abate because she was the first person to go to police with allegations Abate had placed his ungloved fingers inside her genital opening as part of a medical examination.

The Burlington Free Press does not publish the names of alleged victims of sex crimes without their consent.

According to a police affidavit, the woman first confided the details of Abate's examination to Parsons in April 2007, before the woman had told her mother.

Parsons told the jury Tuesday that after the woman told her about Abate's actions, she urged the woman to see another doctor and not to keep what had happened a secret.

"I told her ... she really needed to tell someone, even if it's a parent," Parsons said.

Parsons' testimony followed nearly a day of testimony from Dean Matsuda, a Los Angeles orthopedic surgeon and sports-medicine specialist whom the state hired to review Abate's medical records of the seven female patients.

Eric Miller, Abate's lead attorney, persuaded Matsuda to concede that surgeons can disagree about what the best approach is for finding the source of hip, groin or knee problems, but Matsuda insisted penetration of a woman's genitals with a finger to look for hip or groin pain was unnecessary.

"I would not put my fingers within or around my patient's genitals" for that purpose, Matsuda said.

After the jury was excused for the day, defense attorneys complained to Judge Patricia Zimmerman that the prosecution was over-emphasizing the youth of all of the alleged victims to win sympathy with the jury.

"The state has put the issue of age at the heart of its case," attorney Ian Carleton said in explaining a motion he had filed Tuesday challenging why the state's case against Abate involves conduct only with patients who are young women.

Carleton said pretrial information he had seen showed the state had chosen not to bring charges involving complaints from female patients of Abate's who were in their 40s.

Cindy Maguire, the assistant attorney general leading the prosecution team for the state, said the incidents to which Carleton was referring either involved conduct that did not involve genital penetration or occurred too long ago to warrant a criminal charge.

Zimmerman declined to rule on Carleton's motion but said she would take the issue under advisement.

A one-time team doctor to University of Vermont, St. Michael's College and various high-school athletic teams, Abate is on paid leave from Fletcher Allen Health Care and his teaching duties at UVM pending the outcome of the case against him.

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