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Joe Paterno's cancer poses legal obstacle in case against Jerry Sandusky

It is one of the saddest developments in the sad story enveloping Penn State.

A week after his **firing as Penn State's football coach** amid the **university's child sex abuse scandal**, Joe Paterno disclosed that **he is battling lung cancer**. His family says it is a **"treatable" form of cancer**.

As heart-rending as the medical news is for Paterno's loved ones and fans, his health diagnosis also poses challenges for the attorney general's office in its case against Jerry Sandusky and two other former Penn State administrators.

At age 84, Paterno could face years of legal entanglements from the molestation cases alleged against Sandusky, a former defensive coordinator for the football team. Paterno would likely be a witness in criminal cases and possibly in civil suits.

While everyone wishes a full recovery for Paterno, legal experts say his diagnosis has probably already prompted lawyers to plan strategies if his health worsens.

Paterno looms as a key figure in any case stemming from the Penn State child sex abuse scandal.

This month, **Sandusky was charged with molesting eight boys**, with some cases allegedly happening while he was still an assistant coach. **Former Penn State Athletic Director Tim Curley and Vice President Gary Schultz have been accused of perjury** and failing to report alleged abuses. All three maintain their innocence.

There are short- and long-term consequences to consider, all of which hinge on the course of Paterno's treatments.

Chemotherapy can cause a short-term condition in some people referred to as “chemo brain.” Columbia University professor Paul Appelbaum described it as a mental fog that can cause patients to have trouble recalling names, words or details.

Appelbaum, an expert in mental health issues pertaining to the courts, said those effects are generally short-lived and can be handled as easily as scheduling testimony outside of chemotherapy sessions.

If cancer spreads into a patient’s brain, that can have more permanent effects on the patient’s mental clarity, he said.

For all these reasons, prosecutors, if they weren’t already, might opt to call Paterno as a witness in preliminary hearings scheduled for next month. It would allow prosecutors to start building a record of testimony that could be carried forward into any trials, with or without the coach.

Prosecutors or the defense might think about petitioning for an out-of-court videotaped deposition of the longtime coach, another way to get Paterno’s story on the record for potential jurors with an opportunity for cross-examination by the defense.

Much of Paterno’s health prognosis is unknown. Paterno and his family have asked for privacy as he battles his cancer.

Lung cancer is the most deadly kind. Doctors said that plenty of patients survive lung cancer, and Paterno’s age itself doesn’t substantially alter his chances for a full recovery. But doctors said the description of a “treatable” form of cancer indicates little about his actual prognosis.

The attorney general’s office didn’t return a request for comment on how Paterno’s health could affect the case.

One way or another, the health trials of Paterno are likely to throw curveballs into the case. But legal experts said experienced attorneys have encountered these challenges before.

The need for many strategies

One of the biggest political corruption cases ever fought in Pennsylvania moved forward despite the death of a key witness.

In 1990, an illegal-poker-machine vendor facing criminal charges told an FBI agent about an agreement to donate to then-Attorney General Ernie Preate's campaign in exchange for lax enforcement of gambling laws.

Gabriel Horvath, who initially reported the arrangement, secretly tape-recorded his conversations about Preate with Joseph Kovach, the so-called bagman who collected the contributions from other operators.

When confronted with the tape, Kovach had a heart attack, but he recovered long enough to make videos and other recordings for nine months. Kovach died in 1991.

Former U.S. Attorney David Barasch, who prosecuted the Preate case, said the videotapes Kovach made proved to be a turning point in the investigation. Preate pleaded guilty to mail fraud in 1995 and served a 14-month sentence in federal prison.

When the operators learned they had been recorded, they admitted to lying to the grand jury and apparently told prosecutors they gave about twice as much in cash than Preate had reported on his campaign expense reports.

Barasch said the case illustrates an important point: "In complicated cases, an experienced prosecutor is always building second, third and fourth strategies."

"I would never want to depend on any one person's testimony," added Barasch, who now runs a solo practice in Dauphin County. He said he knows of other cases in which crucial witnesses died, thus dooming the cases.

Some attorneys believe Paterno's testimony will be important for any cases to come, especially if Curley and Schultz seek trials.

William Costopoulos, a well-known midstate defense attorney, said that he would not be surprised if prosecutors call Paterno to the stand at a preliminary hearing or seek a videotaped deposition "sooner rather than later."

Costopoulos said that Paterno's testimony could be important to supplement the testimony of Mike McQueary, an assistant football coach who is on leave. McQueary told the grand jury he witnessed Sandusky sexually assault a boy in the football locker room shower in 2002.

According to the grand jury report, Paterno testified that McQueary told him something of a sexual nature occurred in the shower. Curley and Schultz told the grand jury they were never told about a sex act, but the grand jury did not find their testimony to be credible, the report states.

Some lawyers reached for this story said they see Paterno as a less significant player in the charges against Sandusky, which are more likely to hinge on the testimony of the alleged victims and eyewitnesses.

Attorney [Shanin Specter](#) of Philadelphia said the question of preserving Paterno's testimony could hit the courts surprisingly quickly.

As Specter sees it, there will likely be civil complaints filed in the molestation cases before the end of the year.

Attorneys will almost certainly seek a deposition by Paterno, Specter said.

Specter said only fragments of Paterno's knowledge of and actions regarding the Sandusky allegations have been revealed to date.

"What he has to say is going to be very important to find out for the victims, and potentially for the criminal prosecution," Specter said.

A chance to make peace

Questions of age and health have been a long-running battle in the clergy sex abuse case in Philadelphia.

Attorneys for Cardinal Anthony J. Bevilacqua have argued that he should not be required to testify in an upcoming trial because of his failing health. Bevilacqua's attorneys said the 88-year-old cardinal is battling dementia and prostate cancer.

But Philadelphia Judge M. Teresa Sarmina ruled last week that Bevilacqua must submit to a videotaped deposition in sexual abuse cases against former priests and a former Catholic schoolteacher.

Bevilacqua's deposition is to take place Monday. Bevilacqua has not been charged, but prosecutors have said his testimony could be vital to their case.

It's unclear what Paterno's legal team would do in the Penn State cases.

Paterno's attorney, Sedgwick Sollers of the King & Spaulding law firm in Washington, D.C., did not return a phone message left for this story.

But so far, the ex-coach's family has given no indication that Paterno would run from questioning.

Paterno has said he wishes "he had done more" about the Sandusky allegations. He said his failure to follow up more forcefully on the abuse allegations is "one of the great sorrows of my life."

In a statement announcing the hiring of Sollers, Paterno's son, Scott, said, "My father's desire is for the truth to be uncovered, and he will work with his lawyers to that end."

Costopoulos said Paterno might view his testimony as his last best chance to make his peace with Pennsylvania.

"He may tell his lawyers that he welcomes this opportunity to try to salvage what [he] can about this most horrible event," Costopoulos said.