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Grumbling Over Transparency Intensifies as Jobs Returns to Apple



By Erika Morphy
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Steve Jobs is back at work, and the gang at Cupertino is no doubt thrilled to have their famous leader gracing the company's corridors once again. Investors may not be quite so sanguine, however. Apple has been notoriously close-mouthed about Jobs' recent health crisis, and the clamor for more information seems to be getting louder instead of receding.

[Apple](#) (Nasdaq: AAPL)  has confirmed that CEO Steve Jobs has officially gone back to work, according to numerous media reports. Beyond saying that Jobs would be working both at his office and from home, and that the company was happy to have him back, Apple provided no details about its chief's future involvement with the company.

Apple did not respond to a request for comment on this story.

There are signs that investor concerns are building over Apple's handling of information regarding Jobs' health status, Fred Ruffy, senior trading analyst with WhatsTrading.com, told MacNewsWorld.

Last week, the market apparently was pleased with rumors of Jobs' return.

Apple shares moved higher after *The Wall Street Journal* reported that he had received a liver transplant, and the doctors said his prognosis was "excellent," said Ruffy.

However, events this week are muting the initial optimism somewhat, he said.

"After a nearly six-month leave, the company has not clarified what his role will be or [commented] on his overall health," Ruffy noted.

Indeed, it may be that the honeymoon phase of Jobs' return will be short-lived. The secrecy around his illness has spurred calls for greater disclosure by public companies on such matters.

The Securities and Exchange Commission "should directly classify the health of a firm's CEO as a material fact requiring disclosure," argues Alexa A. Perryman, assistant business professor at Texas Christian University and lead author of a recent paper titled "When the CEO Is Ill: Keeping Quiet or Going Public?"

"The [SEC](#) lacks specific guidelines regarding executive health disclosures," says Perryman. "This leaves companies to decide what does and does not constitute material information."

Sugar Coating

However, SEC rules do not place an affirmative duty on companies to reveal the health of officers unless some trigger event occurs, such as a [10-K](#) or other such disclosure filing, explained Raymond Van Dyke, a partner with [Merchant & Gould](#).

"The question becomes whether a company by withholding or sugar-coating information on the health of a CEO may be misleading the business world," Van Dyke told MacNewsWorld. "With high-profile and very hands-on CEOs like Jobs, that become identified with the company, the argument sharpens, and the duty to disclose is higher, perhaps trumping that CEO's expectations of privacy."

In retrospect, it may seem clear that Jobs' health is of material importance to shareholders. However, companies that have been in similar positions in the past have discovered the issue is nuanced, at best.

"The difficulty is the fact that illness is a fact which is personal to the executive and is not always clearly material from the company's point of view," Steve Goodman, a partner at [Pryor Cashman](#), told MacNewsWorld.

The courts and the SEC have considered a fact to be "material" if "there is a substantial likelihood that a reasonable investor would attach importance" to that fact in making a decision whether to buy or sell a security, said Goodman.

"However, because the law does not explicitly require disclosure of executive illnesses, it is possible to argue -- as Jobs has -- that the company's disclosure obligations do not trump the individual executive's right to privacy regarding his healthcare information," he noted.

Past History

There are few precedents companies can turn to for guidance.

[Steve Ross](#) was CEO Of [Time Warner](#) (NYSE: TWX) when he died from prostate cancer in 1992, with no prior disclosure from the company as to the seriousness of his condition, Goodman pointed out.

[Andrew Grove](#) was CEO of [Intel](#) (Nasdaq: INTC) when he was diagnosed with prostate cancer in 1995. His condition was not disclosed by the company; rather it was revealed in an article Grove wrote for *Fortune* in 1996, Goodman recalled.

On the other hand, continued Goodman, [Berkshire Hathaway](#) disclosed CEO [Warren Buffett's](#) surgery for benign polyps in his colon in 1997 -- along with succession plans.

Also, McDonalds promptly disclosed CEO [Charlie Bell's](#) diagnosis of colorectal cancer in 2004, Goodman noted. Bell died in January 2005.

These examples provide a rough guide for companies faced with similar situations, suggested Goodman.

"First, has the executive disclosed the facts to the company's board? Ross withheld the seriousness of his condition during a period when he brought about the ouster his co-CEO, N.J. Nicholas and engineered the succession of Gerald Levin," said Goodman.

"Then, if the information is disclosed, is it simply factually disclosed or is it 'spun'? Again, in Ross's case, the board was informed by Ross's doctor toward the end of his life that Ross would be able to participate 'at some level' in the company's business but not resume full-time employment. Yet the company's public position continued to be that Ross would soon be returning to work," noted Goodman.

One conclusion could be that in the event an executive simply remained silent on the subject of illness and was able to continue full-time at work, it would be possible to claim that his or her health was a private matter, Goodman said. "However, since the board is charged with supervising management, if the executive's performance is impaired in any way, it would seem advisable to get the complete facts and determine whether those facts are 'material' from the company's point of view."

Just the Facts


There is the law however, and then there are general expectations. Simply put, Apple's identity is closely linked to Steve Jobs, who has been in a battle for his life.

Apple faced a very difficult situation, but it was nevertheless remiss in not being more forthcoming, Michael E. Lawson, professor of economics at [Boston University](#), told MacNewsWorld.

The dilemma for them is real, he said. Steve Jobs led a transformation that moved Apple from a company dependent on the sale of computers to the development of a platform.

"While it is clear that many people at Apple played roles in this transformation, Job is rightly seen as the leader," said Lawson. "With his health in question, can Apple sustain this record of growth and profitability?"

The bottom line: Shareholders are entitled to all of the facts that can weigh on the decision to buy or sell a company's stock, and Steve Job's health and his ability to continue to lead the Apple is a material question, maintained Lawson.

"Apple had the responsibility to answer it in a more forthright manner," he said. 

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