

How load shedding could impact medical negligence cases

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Eskom, the country's only public power utility, is seriously battling to meet the electricity power demands of the population, and this is likely to have catastrophic consequences for the healthcare system. In recent weeks, several government officials have been calling on Eskom to exempt hospitals and health institutions from load shedding. Health institutions rely heavily on electricity and any untimely power cut can have undesirable consequences. These consequences can possibly lead to litigation as death or serious health complications may occur.



Image source: feverpitched – [123RF.com](#)

This, in turn, evokes pertinent questions including whether, in such instances, victims should sue the energy supplier or the health institution itself/department of health; how negligence would be determined in such cases; which medical procedures/interventions are likely to be affected by power cuts; possible measures that can be implemented by health institutions to mitigate against possible harm. This piece intends on delving into these aspects.

Legalities

Health institutions ideally require an uninterrupted power supply to care for critically unstable patients who often require the assistance from multiple electric devices and systems. When load shedding occurs, these devices and systems become either completely dysfunctional or less effective. This is bound to cause serious health complications for the patients. In extreme cases, death may result. To determine negligence in such a case, the following test would apply:

- What would reasonable healthcare givers in the position of the alleged wrongdoers do?
- Did the alleged wrongdoers adopt reasonable steps?
- If the answer is in the negative, then negligence is proven. If it is in the positive, then there is no negligence, and thus no legal case.

In determining reasonable steps in such cases, various factors need to be scrutinised. Factors such as: the availability of alternative power supplies; the condition and state of readiness for use of those alternatives; whether the staff members were advised of the power cut in question and, if they were, what could they have done to prevent harm or mitigate against it; were necessary precautions implemented or installed timely; installing efficient uninterrupted power supply (UPS) technology; storing and maintaining fully charged back-up batteries for essential devices; having a load shedding roster to activate additional clinical and administrative staff when required; and/or connecting sensitive life-sustaining medical devices that are capable of automatically switching between municipal and emergency generator power circuits, etc.

These factors and the circumstances of each incident will determine whether the Department of Health is legally blameworthy. In addition, it is crucial to draw a distinction between public and private health institutions. In the case of a public institution, a victim would sue the Department of Health, whereas in the case of private institution, the private institution itself would be sued.

Possible wrongdoers

It would probably take gross negligence for a victim to successfully claim against Eskom for harm (death or health complications) associated with power cuts. This is because Eskom's duty to supply power is not absolute, and it is legally permitted to implement load shedding where grounds to do so exist. Thus, the prospects of successfully claiming from Eskom are slim. Another possibility is when a health institution has a direct contract with a power supplier. In that case, the starting point would be to scrutinise the provisions, terms, and conditions of the contract. One further instance is where there is a possibility of shared blameworthiness between the health institution and a power supplier in which case the victim will need to launch legal proceedings against both institutions.

Conclusion

The ongoing rolling blackouts are likely to add onto the woes of the healthcare system, it will be interesting to see whether load shedding-linked medical negligence / malpractice cases make their way to our courts.

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