**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEBRASKA**
**OMAHA DIVISION**

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| DEBBIE L. OSTRAND, individually, now known as DEBBIE L. HUPP,<br><br>Plaintiff,<br><br>v.<br><br>NEBRASKA METHODIST HOSPITAL, a non-profit domestic corporation,<br><br>Defendant. | ) | CASE NO. CI: 8:15-cv-451<br><br>**COMPLAINT AND JURY DEMAND** |

COMES NOW Plaintiff, Debbie L. Ostrand, now known as Debbie L. Hupp, by and through her attorneys, and for her cause of action against the Defendant, Nebraska Methodist Hospital, alleges and states as follows:

## JURISDICTION AND VENUE

1. This is a civil action for damages brought pursuant to the Emergency Medical Treatment and Active Labor Act (EMTALA) 42 U.S.C.A. §1395dd, commonly known as the "Anti-Patient Dumping Act."

2. Jurisdiction is in this federal district court as the federal courts may exercise federal question jurisdiction over an EMTALA claim.

3. Venue is in this District pursuant to 28 U.S.C.A. §1391 because the events giving rise to Plaintiff's claims occurred in Omaha, Douglas County, Nebraska.

4. This action is timely brought within the two year limitation period after the December 15, 2013, violation pursuant to 42 U.S.C.A. §1395dd(d)(2)(C).

## PARTIES

5. Debbie L. Hupp is an unmarried woman living in Omaha, Nebraska.

6. Nebraska Methodist Hospital (Hospital) is a non-profit hospital which provides hospital and emergency department services to the public in Omaha, Nebraska.

7. The Hospital is a participating hospital as defined by 42 U.S.C.A. §1395dd(e)(2) and is subject to the provisions of the Emergency Medical Treatment and Active Labor Act (EMTALA) 42 U.S.C.A. §1395dd and 42 C.F.R. §489.24(b).

## FACTUAL ALLEGATIONS

8. On December 15, 2013, Plaintiff came to the Hospital seeking medical care for a headache in the back of her head which started three days prior.

9. Plaintiff presented at 08:36 to the Emergency Department of the Hospital requesting emergency medical treatment for the emergency medical condition of an evolving cerebrovascular accident manifested by complaints of headaches and dizziness over three days.

10. According to the Hospital's emergency department records, the chief complaint was documented as:

a. Headache in back of her head started 3 days ago;

b. History of headaches but this is lasting longer; and,

c. History of HTN (hypertension) but does not take her meds.

11. At 10:03 Plaintiff was seen by nurse, Mitchell L. Barrett, APRN.

12. The course/duration of symptoms was constant and fluctuating in intensity. The location was occipital with radiating pain towards the eyes. The character of the symptoms was sharp and pressure. The degree of pain at onset was moderate. The degree

of pain at the maximum was moderate, and the degree of pain at the present time was moderate.

13. The report of the history of the present illness contained the relevant medical facts of no trauma or injury, and prior migraine headaches but not on preventative meds.

14. According to the Hospital's records, however, financial and insurance facts were included in the history of present illness, such as:

a. History of HTN and DM (diabetes mellitus), but unable to afford health care;

b. Has NO (sic) primary provider and has not seen a medical practitioner in over a year; and,

c. States can't qualify for Medicaid since living with parents and taking care of them.

15. The fact of no employment was contained in the past medical/family/social history:

a. Single;

b. NO (sic) employment;

c. Daily tobacco use; and,

d. Social alcohol use.

16. The Plaintiff's vital signs were: temperature 97.4; pulse 91; blood pressure 178/98; and oximetry 96%.

17. At 10:27 APRN Barrett launched an order for a *stat* CT (computed tomography) of the head without contrast.

18. At 10:59 the CT of the head was performed for indicated headaches. The radiologist, Nick L. Nelson, MD, at 11:11 dictated his report, and in the impression section he made five points:

a. There are several areas of decreased attenuation involving the left frontal lobe and right occipital lobe which likely represents focal ischemic areas. This may be subacute or chronic;

b. There are more focal low density in the right head of the caudate nucleus which probably represents a small lacunar infarct or prominent perivascular space;

c. Small low density in the left external capsule region again probably represents a subacute or older focal ischemic process;

d. There is no evidence of acute hemorrhage; and,

e. MRI may add additional information.

19. APRN Barrett discussed the computed tomography of the head without contrast with the radiologist. APRN Barrett documented the discussion and interpretation and noted only three points:

a. No hemorrhages;

b. Low density noted in left frontal and right occipital regions; and,

c. Chronic ischemic changes likely secondary to HTN (hypertension).

20. At 12:22 APRN Barrett reevaluated Plaintiff and mixed in financial facts with the medical facts:

a. No changes in headache;

b. Discussed all findings thus far;

c. Discussed changes in CT scan as well as need for outpatient MRI of head per radiologist suggestions;

d. Discussed overall poor control of HTN and DM at home;

e. Has excuse of no money or job for insurance and clinic follow up;

f. Discussed use of Ren. [Renaissance] Clinic for follow up;

g. Discussed measuring pressures and sugars at home daily with recording for clinic follow up;

h. No acute neurological deficits;

i. Will [try] additional IV meds today for headache; and,

j. Moving all extremities with ease.

21. At 13:11 APRN Barrett reevaluated Plaintiff and documented these points:

a. Headache improved overall;

b. No acute neurological deficits on re-exam;

c. Will provide $R_x$ Norco and Phenergan for home PRN use;

d. Understands follow-up cares; and,

e. Will allow (sic) Ren. Clinic to arrange outpatient MRI for follow-up on abnormalities noted on head CT.

22. The abnormalities noted on the head CT were not appropriately screened with a follow-up MRI of the brain to determine if an emergency medical condition existed, and the Hospital knew that an emergency medical condition of ischemic changes in the brain existed.

23. At 13:14 APRN Barrett discharged Plaintiff to home with educational materials for General Headache Without Cause. Plaintiff was instructed to follow-up with the Renaissance Health Clinic in three days and to call for follow-up appointment.

24. Plaintiff was also instructed to return to the ED if symptoms worsen.

25. On December 16, 2013, Plaintiff returned at 11:16 to the Hospital's emergency department for dizziness, not feeling well, and a feeling of falling forward.

26. The history of the present illness was documented that the patient presents with dizziness "not feeling well". The onset was four days ago. The additional history was that she was evaluated for headache yesterday and the CT of the head showed hypodense areas that could have represented subacute or chronic infarcts.

27. Plaintiff was seen at 13:08 by the emergency physician, Gary J. Gustafson, MD, and he launched orders at 13:10 for a *Stat* MRI head without contrast for cerebrovascular accident/stroke.

28. The radiologist, Merlyn D. Gibson, MD, documented the reason for the exam as headache, hard time focusing, and mildly abnormal head CT. He compared the head CT of December 15, 2013, with the current brain MRI without contrast and in his report made the following six points in the Impression section:

a. Moderate-sized area of restricted diffusion to the right occipital lobe. Suspicious for an area of acute cerebrovascular accident in a patient who is having trouble focusing;

b. Additional punctate areas of restricted diffusion in the right temporal lobe and in the right periventricular white matter superiorly and also abutting the anterior horn of the left lateral ventricle;

c. In additional these new findings of restricted diffusion, there is other chronic periventricular white matter changes – some orientated perpendicular to the ventricle. On the sagittal T2 weighted images, there is some gliosis of the

corpus callosum. Consider multiple sclerosis in addition to the area of an acute cerebrovascular accident;

d. No mass or mass effect on these noncontrast images. NO contrast was administered;

e. White matter changes seen in the brainstem bilaterally – consistent with chronic gliosis; and,

f. No infra- or extraaxial fluid collections or hemorrhage.

29. Dr. Gustafson reexamined and reevaluated Plaintiff at 15:02 and documented the following points:

a. MRI shows a right occipital infarct and small other infarcts, as well as changes suggesting multiple sclerosis;

b. Patient has no MD and was referred to Renn clinic, but will admit to expedite echo and dopplers; and,

c. Patient is not a TPA candidate as it is unknown when this occurred.

30. At 15:07 Plaintiff was admitted to the Hospital with telemetry for observation with a diagnosis of cerebrovascular accident and possible multiple sclerosis.

31. At 21:24 Plaintiff was evaluated by Katherine A. Hoppes, MD, who performed a history and physical and documented the following points:

a. She presented to Methodist Hospital emergency department yesterday with the complaint of occipital headache for 3 days;

b. She underwent a CT of the head which showed an abnormality described as several areas of decreased attenuation involving the left frontal lobe and right occipital lobe which likely represent focal ischemic areas;

c. She was discharged to home and told to follow-up with an outpatient MRI;

d. She called the Renaissance Clinic and could not get scheduled for an MRI;

e. She continued to have significant difficulties today with balance when walking as well as with vision;

f. Therefore she presented to Methodist Hospital emergency department for evaluation;

g. She underwent an MRI that showed a moderate-sized area of restricted diffusion in the right occipital lobe suspicious for an area of acute cerebrovascular accident;

h. Additional punctate areas of restricted diffusion in the right temporal lobe and in the right paraventricular white matter also abutting the anterior horn of the left lateral ventricle;

i. Radiology was concerned about possible multiple sclerosis because of her imaging; and,

j. She is being admitted for evaluation of her stroke and Neurology considering diagnosis of multiple sclerosis.

32. Plaintiff was admitted to inpatient status with multiple infarcts in the right occipital lobe as shown by CT and MRI studies, and was aggressively medically managed with ASA and Statin for risk reduction.

33. Plaintiff continued to show cognitive, as well as mobility and self-care activities of daily living deficits while an in-patient, and was discharged to the hospital's acute rehabilitation on December 19, 2013.

34. During her inpatient rehabilitation stay, her attending physician, Jose V. Poblador, DO, documented that Plaintiff seemed to have difficulty understanding the extent or implications of her cognitive deficits. She was discharged from acute rehabilitation on

December 24, 2013, with multiple discharge diagnoses of which the first three in order were:

a. Multifocal strokes, likely embolic in nature, occurring on or around December 15, 2013;

b. Neurologic sequelae of her multifocal embolic strokes including:

i. Mild left hemiparesis;

ii. Cognitive deficits;

iii. Balance deficits; and,

c. Impaired mobility and activities of daily living secondary to above, markedly improved.

35. Plaintiff currently struggles with the neurologic sequelae of her multifocal embolic strokes.

**FAILURE TO PROVIDE APPROPRIATE MEDICAL SCREENING – EMTALA**

36. Plaintiff incorporates paragraphs 1 to 35 of the Complaint as if set forth fully herein.

37. Pursuant to 42 U.S.C.A. §1395(d)(2)(A), Plaintiff may in a civil action against the participating Hospital obtain damages available for personal injury under the law of the State in which the Hospital is located, and such equitable relief as is appropriate.

38. The Hospital violated 42 U.S.C.A. §1395dd(a) because the Plaintiff was suffering from an evolving cerebrovascular accident which is an emergency medical condition, and the hospital failed to provide an appropriate medical screening examination on December 15, 2013, to determine whether the abnormal changes noted on the CT of the head indicated that a medical emergency condition existed.

39. The Hospital violated the primary purpose of 42 U.S.C.A. §1395dd(a) which was to address a distinct and rather narrow problem – the "dumping" of uninsured, underinsured, or indigent patients by hospitals who did not want to treat them.

40. The Hospital "dumped" the uninsured Plaintiff for discriminatory reasons because it did not want to treat her with an MRI of the head as part of an appropriate medical screening examination, as the Hospital clearly documented in several places in the medical record that Plaintiff had no money, no job, no insurance, no primary care provider, and cannot qualify for Medicaid.

41. The Hospital perceived the Plaintiff as suffering from an emergency medical condition which required an MRI screening of the brain, and the Hospital chose not to provide an appropriate screening and "dumped" the Plaintiff to a charitable facility for the necessary MRI screening of the brain.

42. The Plaintiff suffered from an emergency condition as the medical condition was manifesting itself by acute symptoms of sufficient severity such that the absence of immediate medical attention could reasonably be expected to result in placing the health of the Plaintiff, and the serious dysfunction her brain, in serious jeopardy; and that the Hospital knew of the existence of this specific emergency medical condition.

43. The Hospital also failed to provide Plaintiff with the necessary appropriate medical screening examination to determine whether an emergency medical condition existed because the Hospital screened the Plaintiff differently from other patients perceived to have the same condition, in the following, but not limited to, respects:

a. Improperly "dumped" Plaintiff by scheduling an outpatient MRI of the brain three days later based upon discriminatory reasons, to-wit: no money, no job, no insurance, no primary care provider, and can't qualify for Medicaid;

b. Improperly "dumped" Plaintiff when she was shunted off by the Hospital to the Renaissance Clinic, a so-called "charity institution" associated with the Salvation Army, for the recommended MRI of the head for an appropriate screening examination to determine whether an emergency medical condition existed;

c. Failed to conduct a full and complete medical screening examination for suspicious documented abnormal changes noted on the CT of the head;

d. Treated the uninsured Plaintiff disparately from other similarly situated, but insured, patients;

e. Departed from the Hospital's standard medical screening examination of patients with complaints and symptoms similar to those of Plaintiff;

f. Failed to provide a level of screening examination reasonably needed to uniformly identify critical conditions that may be afflicting symptomatic patients who present with substantially similar conditions;

g. Failed to adhere to the Hospital's own standard policies, procedures, protocols, care paths, and/or critical pathways for patients entering the emergency department under similar medical circumstances; and,

h. Otherwise departed from obligations imposed upon the Hospital.

44. The Hospital did not want to treat Plaintiff and chose not to perform the appropriate examination to rule out an evolving cerebrovascular emergency medical condition with the suggested MRI of the brain.

45. The medical screening was inappropriate as a normal paying patient that afternoon would have received the suggested MRI screen of the brain to determine if the

patient was suffering from an evolving cerebrovascular emergency medical condition, rather than delaying the MRI screen of the brain for three days at an outpatient facility.

46. The Hospital did not screen the Plaintiff in the same way it screened other patients to determine whether the Plaintiff had an emergency medical condition, and this resulted in a disparate impact upon her.

47. The necessary and appropriate MRI study of the brain to rule out the existence of a cerebrovascular emergency would have been given to other paying patients, but the appropriate screening was withheld from the Plaintiff based upon improperly documented financial, employment, and insurance considerations in the following, respects:

a. The evaluating APRN blamed the Plaintiff and characterized her lack of money as an excuse;

b. The APRN blamed the Plaintiff as using the lack of a job as an excuse;

c. The Plaintiff was blamed for the lack of insurance as an excuse;

d. Plaintiff was unable to afford healthcare to manage her history of hypertension and diabetes;

e. She has NO (sic) primary care provider;

f. She has not seen a medical practitioner in over a year;

g. States she cannot qualify for Medicaid since living with parents and taking care of them; and,

h. She has no employment.

48. The Hospital discriminated against the Plaintiff because it did not want to treat her due to her lack of health insurance, and therefore, inappropriately withheld the MRI

screening of the brain, and disregarded the medical fact of the recommendation of the Hospital's radiologist that the MRI may add additional information regarding:

a. Subacute or chronic focal ischemic areas involving the left frontal lobe and right occipital lobe;

b. A small lacunar infarct or prominent perivascular space of the right head of the caudate nucleus; and,

c. A subacute or older focal ischemic process of the left external capsule region.

49. The MRI of the brain was needed as part of an appropriate medical screening to determine if the Plaintiff was suffering from the emergency medical condition of an evolving cerebrovascular accident.

50. The refusal to provide an MRI study of the brain resulted in an inappropriate screening examination which had a disparate impact on the Plaintiff.

51. Had a patient with health insurance presented with a similar history, with similar signs and symptoms, that patient would have been appropriately screened with a brain MRI performed in the hospital, and that similar, but insured, patient would not have been discharged with instructions to obtain an MRI of the brain several days later at a charitable outpatient clinic.

52. The improper considerations of lack of insurance and employment used by the Hospital in the screening process resulted in the withholding of the appropriate MRI of the brain study which was reasonably needed to determine whether Plaintiff's condition was an emergency medical condition.

53. When the Plaintiff returned to the Hospital on December 16, 2013, the improper considerations of lack of insurance and employment were not used, and the Plaintiff

received the appropriate medical screening to determine that the emergency medical condition of an evolving cerebrovascular accident was, in fact, occurring.

54. As a proximate result of the Hospital's "dumping" of the Plaintiff, which had a disparate impact on her, Plaintiff's emergency medical condition was allowed to progress after her discharge which resulted in a cerebrovascular accident documented to have occurred on December 15, 2013.

55. As a proximate result of the Hospital's failure to provide an appropriate medical screening on December 15, 2013, which had a disparate impact on the Plaintiff, her emergency medical condition was allowed to deteriorate, resulting in a cerebrovascular accident documented to have occurred on December 15, 2013.

56. As a proximate result of the Hospital's "dumping" of Plaintiff, and as a proximate result of its failure to provide her an appropriate medical screening on December 15, 2013, Plaintiff suffered the following injuries:

a. Permanent brain injury;

b. Permanent disability;

c. Past hospital and medical expenses to treat her brain injury;

d. Future medical expenses to treat her brain injury;

e. Permanent loss of earning capacity;

f. Past physical pain and mental suffering; and,

g. Future physical pain and mental suffering.

WHEREFORE, Plaintiff Debbie L. Ostrand demands judgment against the Defendant Nebraska Methodist Hospital for monetary damages in accordance with the provisions of 42 U.S.C.A. §1395dd(2)(A), and applicable state laws for her general damages and for her taxable costs and expenses incurred herein.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury in Omaha, Nebraska, on all issues in this matter so triable.

DATED this 14th day of December, 2015.

DEBBIE L. OSTRAND,
Plaintiff,

By: /s/ Steven M. Watson

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