STATE OF ILLINOIS
ILLINOIS DEPARTMENT OF HUMAN RIGHTS

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Dept. of Human Rights
INTAKE UNIT
JUN 30 2016
RECEIVED
By:

CHARGE NO: _____

CHARGE OF DISCRMINIATION

COMPLAINANT

Melanie Jones
[redacted]

I believe that I have been personally aggrieved by a civil rights violation committed on

(date/s of harm): January 7, 2016 **, by:**

RESPONDENT

Mercy Hospital and Medical Center
2525 South Michigan Avenue
Chicago, IL 60616
(312) 567-2000

SEE ATTACHED

I, Melanie Jones **on oath or affirmation state that I am Complainant herein, that I have read the foregoing charge and know the contents thereof, and that the same is true and correct to the best of my knowledge.**

Melanie Jones 6/29/16
Complainant's Signature and Date

Subscribed and Sworn to

Before me this 29th **day**

of June, 2016.

Christopher M. Romer
Notary Public Signature

CHRISTOPHER M ROMER
OFFICIAL SEAL
Notary Public, State of Illinois
My Commission Expires
October 09, 2019

Notary Stamp

ATTACHMENT

I. A. ISSUE/BASIS

January 7, 2016: Respondent Mercy Hospital and Medical Center ("Mercy"), a place of public accommodation, denied to Melanie Jones the full and equal access to its facilities, goods, and services on the basis of her sex. Mercy has instituted religious restrictions that prevent physicians and other health care professionals who practice in Mercy facilities from offering women with medically prescribed devices used to prevent pregnancy *any* care related to those products, even when adhering to this policy requires refusing care to women who are bleeding and in pain, at risk for further complications, and in need of immediate treatment. Mercy's categorical denial of this type of contraception-related care to women denies members of one sex equality of access to a place of public accommodation in violation of 775 ILCS 5/5-102(A).

B. PRIMA FACIE ALLEGATIONS

1. Complainant, Ms. Jones, is a 28-year-old woman who resides in Chicago, Illinois. She works part-time for a non-profit organization called the Chicago Area Runners Association (CARA), where she provides media and communications support.

2. Respondent, Mercy, is a health care provider with 18 separate locations throughout the Chicago area. Mercy provides a range of health care services, including obstetrics and gynecology. *See* Mercy Hospital and Medical Center, Hospitals and Locations, http://www.mercy-chicago.org/body.cfm?id=302&action=list&view=all (last visited Jun. 29, 2016).

3. Mercy is a public accommodation as defined by 75 ILCS 5/5-101(A)(6) (defining places of public accommodation to include the "professional office[s] of a health care provider, hospital, or other service establishment").

4. Mercy receives federal financial assistance through its acceptance of Medicaid and Medicare funding. Illinois Department of Public Health, Illinois Hospital Report Card and Consumer Guide to Health Care, Mercy Hospital and Medical Center, http://www.healthcarereportcard.illinois.gov/hospitals/view/101232 (last visited Jun. 30, 2016) (42.23% of Mercy's inpatient insurance is Medicaid, and 40.31% of its inpatient insurance is Medicare. 38.55% of its outpatient insurance is Medicaid, and 22.23% of its outpatient insurance is Medicare).

Mercy's Imposition of Religious Health Care Restrictions

5. Mercy operates under religious directives known as the Ethical and Religious Directives for Catholic Health Care Services ("the Directives"), promulgated by the United States Conference of Catholic Bishops. *See* United States Conference of Catholic Bishops, Ethical and Religious Directives for Catholic Health Care Services, 5th Ed. (Nov. 17, 2009), http://www.usccb.org/issues-and-action/human-life-and-dignity/health-care/upload/Ethical-Religious-Directives-Catholic-Health-Care-Services-fifth-edition-2009.pdf.

6. Directive 5 states: "Catholic health care services must adopt these Directives as policy, require adherence to them within the institution as a condition for medical privileges and employment, and provide appropriate instruction regarding the Directives for administration, medical and nursing staff, and other personnel."

7. Directive 9 states: "Employees of a Catholic health care institution must respect and uphold the religious mission of the institution and adhere to these Directives."

8. Together, Directives 5 and 9 require Mercy to implement the Directives internally and impose them on all Mercy practitioners. The Directives do not provide Mercy with guidance as to how to implement and impose the Directives to ensure that they do not cause discriminatory treatment or other harm to Mercy patients.

9. Directive 52 states: "Catholic health institutions may not promote or condone contraceptive practices, but should provide, for married couples and the medical staff who counsel them, instruction about the Church's teaching on responsible parenthood and in methods of natural family planning."

10. Directive 52 does not specify what types of medical treatment constitute "promot[ing] or condon[ing] contraceptive practices."

11. Mercy's internal policy implementing Directive 52 requires physicians to deny women with medically prescribed devices that are used to prevent pregnancy, including IUDs, *any* treatment related to these products, even when compliance with this requirement requires turning women away who are bleeding, in pain, and in need of immediate care.

12. IUDs are small devices inserted into a woman's uterus to prevent pregnancy. They work by preventing the fertilization of the egg by the sperm. *See* American College of Obstetricians and Gynecologists, Frequently Asked Questions 184: Contraception (May 2016), http://www.acog.org/Patients/FAQs/Long-Acting-Reversible-Contraception-LARC-IUD-and-Implant#iud ("ACOG FAQ").

13. Because of the manner in which IUDs work to prevent pregnancy, only women use and are able to use them. There are no medically prescribed contraceptive devices available to men. *See* Food and Drug Administration, Office of Women's Health, Birth Control Guide, *available at* http://www.fda.gov/downloads/ForConsumers/ByAudience/ForWomen/FreePublications/UCM356451.pdf (last visited, Jun. 29, 2016).

14. There are two primary types of IUDs available to women: hormonal IUDs, which release progestin, and copper IUDs, which have no hormones. Both types are highly effective. *See* ACOG FAQ (IUDs are the most effective form of reversible birth control. During the first year of typical use, fewer than 1 in 100 women using an IUD will become pregnant).

15. Because of their effectiveness, the use of IUDs among women in the United States is increasing. *See* Amy Branum & Jo Jones, *Trends in Long-acting Reversible Contraception Use Among U.S. Women Aged 15-44,* Center for Disease Control National Center for Health Statistics Data Brief No. 188 (2015), http://www.cdc.gov/nchs/products/databriefs/db188.htm (IUD use among women in the United States is steadily increasing, and increased 83% from 2006–2010 to 2011–2013).

Mercy's Denial of Health Care to Melanie Jones

16. In 2008, when Ms. Jones was 20 years old, she had a transient ischemic attack (TIA, often referred to as a "mini-stroke"). After this incident, Ms. Jones learned from her doctor that continuing to take hormonal contraception could lead to blood clots and increase the risk of a repeat TIA or a full stroke in the future. Following her doctor's advice, Ms. Jones stopped taking hormonal contraception.

17. After relying on condoms for birth control for a number of years, Ms. Jones learned about the copper IUD, a more reliable method of non-hormonal birth control. Because it would not present the same health risks that oral contraception and hormonal IUDs posed for her, Ms. Jones had a copper IUD inserted in 2012.

18. Ms. Jones moved to Chicago, Illinois in 2013 and began working for CARA in July 2015. Because CARA does not provide health insurance for part-time employees such as Ms. Jones, Ms. Jones purchased an insurance plan from Blue Cross Blue Shield of Illinois ("BCBS-IL") in August 2015. She chose an HMO plan from BCBS-IL with high co-pays and low premiums, which was a plan she could afford and which she believed would serve her health care needs.

19. On December 30, 2015, Ms. Jones slipped on water and fell hard onto the ground into a partial split position. Soon afterwards, Ms. Jones felt a sharp pain in her back and right abdomen. The next morning, she saw bright red clots of blood in the toilet. She experienced heavy vaginal bleeding and pain, which continued over the next several days.

20. On January 2, 2016, Ms. Jones contacted a friend who is a nurse and told her what had happened. Ms. Jones' friend informed her that, while this was not her area of expertise, the symptoms seemed to be consistent with a dislodged IUD, which could have been caused by the fall. She suggested that Ms. Jones contact a physician.

21. That afternoon, Ms. Jones searched her BCBS-IL insurance network for a provider. She contacted a number of other health care providers before reaching the office of Dr. Judy Sun, an obstetrician-gynecologist at Mercy, with whom she was able to make an appointment on short notice. Ms. Jones explained her circumstances to the person scheduling the appointment—including the fact that she suspected her non-hormonal, copper IUD had become dislodged. She scheduled an appointment to see Dr. Sun at Mercy's Dearborn Station office, located at 47 W. Polk Street Chicago, Illinois 60605, on January 7, 2016.

22. When Ms. Jones arrived for her appointment, she was still experiencing pain and bleeding from the fall. She checked in for her appointment with the receptionist, paid a $50 co-pay, and filled out a form, which included the reason for her visit—that she suspected her IUD had become dislodged, as she had been experiencing heavy vaginal bleeding and ongoing pain.

23. After checking in, Ms. Jones met first with a nurse and then with the obstetrician-gynecologist. Each time, Ms. Jones explained what had happened to her and the nature of her ongoing symptoms, including that she had been experiencing pain and vaginal bleeding. She also explained that she believed her non-hormonal, copper IUD had become dislodged. Dr. Sun conducted a full examination before confirming that the IUD had, in fact, become dislodged and was partially expelled from Ms. Jones' uterus.

24. Dr. Sun told Ms. Jones that her IUD needed to be removed but that she could not remove it because of religious restrictions that bound her practice—which she referred to as Mercy's "Catholic initiative." She then offered to check with colleagues to verify her understanding that Mercy's policy would not permit her to provide Ms. Jones the care she needed. Dr. Sun left Ms. Jones alone in the examination room for approximately 10 minutes. When she returned, she stated that her "hands [were] tied" by Mercy's restrictions and that she would not be able to remove Ms. Jones' partially expelled IUD.

25. Dr. Sun told Ms. Jones that her refusal to remove Ms. Jones' IUD was based on a "new rule" at Mercy under the "Catholic initiative." Under this rule, none of Mercy's providers could provide treatment related to copper IUDs—meaning she could no longer insert *or remove* them from patients—even if the IUD was dislodged and causing "excruciating pain" and heavy bleeding.

26. Dr. Sun told Ms. Jones that if she had a hormonal IUD, she could provide her with medical care, because she could attribute the use of the IUD to a purpose other than preventing pregnancy—such reducing menstrual cramps. However, because the only purpose of the copper IUD was to "prevent pregnancy," Dr. Sun told Ms. Jones that there was nothing she or any other Mercy provider could do to help.

27. Understanding for the first time that Mercy planned to send her home without providing her any medical care to address the partially expelled IUD despite the continued pain and bleeding, Ms. Jones asked whether she could at least be referred to another provider who could remove the IUD. In response, Dr. Sun told her that her network was comprised solely of providers bound by the same Catholic restrictions. She told Ms. Jones that her only option was to switch to a new insurance network—one that included providers who are not bound by the religious restrictions imposed on Mercy providers. However, she told Ms. Jones that that process would take her a month, and that she should feel fortunate because sometimes switching networks takes up to six months or even a year.

28. Ms. Jones asked Dr. Sun if she would be able to run while the IUD was still dislodged. Dr. Sun told her she could, but that there was a risk that the IUD might "fall out" while she was running. She did not warn Ms. Jones about any other potential harms of leaving the partially expelled IUD in place. She did not inform Ms. Jones that leaving the IUD in place could result in increased pain, bleeding, physical limitations, and heightened risks of infection, cervical and uterine lacerations and scarring, and pregnancy.

29. Even without fully appreciating these risks, Ms. Jones was distraught about Mercy's refusal to treat her. In addition to her concern about her physical condition, Ms. Jones felt singled out and stigmatized by Mercy's policies.

30. Ms. Jones also left experiencing continued pain and bleeding from the partially expelled IUD, and believing, based on the information Mercy had provided, that she had no option for getting care without going through the process of changing insurance networks. Ms. Jones considered going to an emergency room, but the emergency room co-pay under her policy was $1,000, which she could not afford. An urgent care facility was also not an option, since her policy provided no coverage for treatment at any facility outside the established network, and she had been informed at Mercy that every provider within her network was limited by the "Catholic initiative."

31. After speaking with friends and family, Ms. Jones contacted RBF attorneys who advised her to contact BCBS-IL and demand that they expedite the process of switching her to a new insurance network, so that she could quickly obtain the care she needed.

32. BCBS-IL ultimately switched Ms. Jones to a new network, effective January 12, 2016. However, even as of the morning on January 12, Ms. Jones did not know whether the network change would be effective in time for her to attend an appointment that day with a new obstetrician-gynecologist. Fortunately, the network change was effective in time for Ms. Jones to keep her new appointment.

33. When she arrived for her appointment, Ms. Jones paid another $50 co-pay and met with a nurse before meeting with the physician. She told the nurse and the physician both about her fall, the pain and the bleeding. She also told them what the Mercy physician had told her. Specifically, she explained that the Mercy physician had told her that her IUD had become dislodged when she fell and needed to be removed, but that Mercy would not remove the IUD because of Mercy's Catholic restrictions on care.

34. The new physician verified that Ms. Jones' IUD was dislodged and partially expelled from her uterus. She then removed the IUD with ring forceps.

35. The new physician recommended that Ms. Jones not have a new IUD inserted right away, because there was a risk that she had suffered lacerations from the dislodged

IUD, which would need time to heal fully. She recommended that Ms. Jones monitor her symptoms for any continued pain and bleeding, and return for a check-up and re-insertion at a later date.

36. By refusing to remove Ms. Jones' partially expelled IUD, Mercy subjected Ms. Jones to an ongoing risk of lacerations to her cervix and uterus. In addition, Mercy's refusal also subjected Ms. Jones to continued vaginal bleeding and pain, as well as physical limitations, and heightened risks of infection, pregnancy, and damage or scarring to the cervix and uterus.

37. Mercy's policies subjected Ms. Jones to physical harm as well as stigmatization and discrimination because of her need for care relating to her non-hormonal IUD—the safest and most reliable method of birth control available to her.

38. Mercy's imposition of religious restrictions that deny medical care to women with medically prescribed devices that are used to prevent pregnancy denies members of one sex equality of access to the services of a place of public accommodation in violation of 775 ILCS 5/5-102(A).

39. Mercy's policy and practice of refusing all care relating to an IUD used to prevent pregnancy also constitutes disparate impact sex discrimination. Medically prescribed contraceptive devices, including IUDs, are used by women alone. Thus, Mercy's categorical denial of basic health care related to these devices has a disproportionate and harmful impact on members of one sex in violation of 775 ILCS 5/5-102(A).