

**BEFORE THE STATE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL FROM THE BOARD OF NURSING**

IN THE MATTER OF
DONNA HAMSHAR

OAH No. 06-0555-NUR

DECISION AND ORDER ON SUMMARY ADJUDICATION

I. Introduction

This case was referred to Office of Administrative Hearings (OAH) because Donna Hamshar filed a Notice of Defense in response to the Accusation issued by the Division of Corporations, Business and Professional Licensing (Division) on July 13, 2006. The Accusation requests that the Board of Nursing take disciplinary action against Ms. Hamshar's Alaska Registered Nurse License.

The Division filed a motion for summary judgment arguing that no material facts are in dispute and that this case. Summary adjudication is granted to the Division because, based on the undisputed facts as asserted by the Division, which are supported by the evidence that the Division has submitted.

II. Facts

A. History

This case was assigned to Administrative Law Judge Mark T. Handley. The first prehearing teleconference was held on October 23, 2006, at 10:00 a.m. Alaska time. At that hearing Ms. Hamshar's attorney, Paul Grant, appeared and explained that he had been unable to contact his client, and was withdrawing as her counsel in this appeal.

A second prehearing conference was scheduled for November 9, 2006 at 2:00 P.M. Notice of this second prehearing conference was sent directly to Ms. Hamshar's address of record. The Notice was sent by certified, return receipt requested mail. The receipt was not returned, and Ms. Hamshar did not appear for second prehearing conference. Ms. Hamshar did not provide a phone number of record, other than that of her former attorney, with her Notice of Defense. Robert Auth, Assistant

Attorney General, counsel for the Division, participated by telephone. Ms. Hamshar did not participate. The prehearing conference was recorded.

At the second prehearing conference an order was issued which set a schedule for filing briefing on dispositive motions in this case. December 8, 2006 was set as the deadline for parties to submit motion for summary adjudication. The Division filed a timely Motion for Summary Judgment. December 29, 2006 was set as the deadline for parties to submit response briefs to the other party's motion for summary adjudication. Ms. Hamshar did not respond to the Division's Motion for Summary Adjudication.

B. Uncontested Facts

In her notice of defense, Ms. Hamshar did not specifically dispute any of the allegations in the Division's accusation.¹ Ms. Hamshar simply requested a hearing on the matters set forth in the Division's accusation.² In its motion for summary judgment, that Division relied on its version of the facts, which are supported by documentary evidence that the Division filed with its motion and the accusation. These asserted facts are found in both the "Factual Background" and the "Legal Argument" sections of Division's motion. Ms. Hamshar did not respond to the Division's motion. Ms. Hamshar has not disputed the facts asserted by the Division. These following facts are therefore uncontested.

1. Uncontested Facts in the "Factual Background" section of Division's motion

On June 13, 1997, Ms. Hamshar was issued Registered Nurse License No. I8021.³ That license lapsed on November 30, 2006.⁴ Ms. Hamshar also began working as a public health nurse at the Juneau Public Health Center (Center) in 1997.⁵ The section of Public Health Nursing is part of the Alaska Division of Public Health and provides a wide variety of health assessment, health promotion, and disease prevention services and program management in the broad areas of 1) infectious disease, 2) family and individual health, 3) non-infectious disease, 4) violence and injury, 5) health data assessment, 6) community health, 7) quality assurance, 8) policy development, and 9) administration.⁶ Client services are mostly to rural and low income and/or underinsured individuals

¹ Notice of Defense August 2, 2006.

² Notice of Defense August 2, 2006.

³ Accusation, July 13, 2006, at Paragraph 1; see Affidavit of Kenneth Weimer, attached at Paragraph 6 of Accusation.

⁴ Accusation, July 13, 2006, at Paragraph 1; see Affidavit of Kenneth Weimer, attached at Paragraph 6 of Accusation.

⁵ Accusation, July 13, 2006 at Paragraph 2; Weimer Affidavit at Paragraph 6.

⁶ Accusation July 13, 2006 at Paragraph 2; Public Health Nursing Website & Exhibit 1.

and families.⁷ As a public health nurse at the Center, Ms. Hamshar had significant responsibilities to contact, evaluate and follow-up her clients.⁸

Ms. Hamshar typically had an independent caseload that encompassed both caring for clients with communicable diseases, those with social issues, especially relating to families and care of children, and assisting families that might have problems navigating the health care system.⁹ Ms. Hamshar's caseload frequently included immigrants, particularly those that had limited English speaking skills, people with limited resources and people at risk for health problems, such as pregnant teens who needed timely evaluations and close follow-up to assure good outcomes.¹⁰ Such patients could not be expected to initiate contact, or follow through with health related activities for which they were unfamiliar.¹¹

On January 6, 2005, the Center received a phone call from a man who was concerned that his wife had not been started on tuberculosis (TB) medication.¹² The client had been assigned to Ms. Hamshar on September 9, 2004, but there was no documentation of any action taken by Ms. Hamshar on behalf of this client.¹³ The discovery of this client's situation prompted the Center to pull the records of client referrals to Ms. Hamshar during the year 2004 and check the status of those clients.¹⁴

After reviewing many of the charts assigned to Ms. Hamshar, Kate Slotnick, nurse manager at the Center and Ms. Hamshar's immediate supervisor, met with Ms. Hamshar on January 10, 2005.¹⁵ Nurse Manager Slotnick told Ms. Hamshar that she was concerned about the patients on Ms. Hamshar's caseload, particularly because many of her charts had no documentation from Ms. Hamshar at all.¹⁶

On January 11, 2005, Nurse Manager Slotnick wrote to Ms. Hamshar, directing Ms. Hamshar to report for an investigative interview on January 13, 2005 to discuss her improper and inadequate documentation in her patient charts and her failure to contact patients who were assigned to her.¹⁷

⁷ Accusation July 13, 2006 at Paragraph 2; Public Health Nursing Website, Exhibit 1.

⁸ Accusation July 13, 2006 at Paragraph 4; Report of Barbara Berner, Exhibit 52, at 001129.

⁹ Accusation July 13, 2006 at Paragraph 4; Report of Barbara Berner, Exhibit 52, at 001129.

¹⁰ Accusation July 13, 2006 at Paragraph 4; Report of Barbara Berner, Exhibit 52, at 001129.

¹¹ Accusation July 13, 2006 at Paragraph 4; Report of Barbara Berner, Exhibit 52, at 001129.

¹² Accusation July 13, 2006 at Paragraph 5; Affidavit of Kate Slotnick at Paragraph 2.

¹³ Accusation July 13, 2006 at Paragraph 5; Affidavit of Kate Slotnick at Paragraph 2.

¹⁴ Accusation July 13, 2006 at Paragraph 5; Slotnick Affidavit at Paragraph 3.

¹⁵ Slotnick Affidavit at Paragraph 5.

¹⁶ Slotnick Affidavit at Paragraph 5.

¹⁷ Slotnick Affidavit at Paragraph 6; Exhibit 4.

On January 13, 2005, several of those client records were discussed with Ms. Hamshar during an investigative interview.¹⁸

On January 18, 2005 Nurse Manager Slotnick wrote to Dr. Richard Mandsager, the Director of the Division of Public Health, summarizing the investigation to date, particularly Ms. Hamshar's responses to the questions raised about various patients during the investigative interview.¹⁹ After the interview, Nurse Manager Slotnick met with Sylvia Severson, the Southeast Region Nurse Manager, and Rhonda Richtsmeier, the Deputy Chief of Public Health Nursing, and reviewed all the records for the patients assigned to Ms. Hamshar during 2004.²⁰ This work resulted in two documents: 1) TB and MISC Referrals for D H²¹ and 2) MCH Referrals for D H,²² which are primarily summaries of patient records that had not been discussed at the January 13, 2005 investigative interview.²³

After reviewing those records, Nurse Manager Slotnick scheduled a second investigative interview for January 25, 2005.²⁴ This interview was to encompass both follow-up issues related to the January 13th interview and new questions regarding the patient records reviewed after the January 13th interview.²⁵ However, the interview never took place because Ms. Hamshar resigned from the Center on January 24, 2005.²⁶

On February 4, 2005, Nancy Davis, RN, MS, Chief of Public Health Nursing, filed a complaint with the Board of Nursing regarding Ms. Hamshar.²⁷ On April 25, 2005, Nurse Manager Slotnick sent to Investigator Weimer at the Division all of the relevant patient records discussed herein.²⁸

The Division opened an investigation and hired Advanced Nurse Practitioner and Registered Nurse Barbara Berner to review the client files of the cases assigned to Ms. Hamshar as well as other

¹⁸ Accusation at Paragraph 5; Slotnick Affidavit at Paragraphs 7-8. Nurse Manager Slotnick's notes from that interview are contained at Exhibit 5 (342-344); Slotnick Affidavit at Paragraph 7.

¹⁹ Slotnick's Affidavit at Paragraph 7; Exhibit 18 (352-357).

²⁰ Slotnick Affidavit at Paragraph 9.

²¹ Exhibit 19, (361-363).

²² Exhibit 35, (358-360).

²³ Slotnick Affidavit at Paragraphs 9-11.

²⁴ Accusation July 13, 2006 at Paragraph 5; Slotnick Affidavit at Paragraph 12.

²⁵ Slotnick Affidavit at Paragraph 12; Exhibit 46 (364-371) (Nurse Manager Slotnick's pre-interview notes).

²⁶ Accusation July 13, 2006 at Paragraph 5; Slotnick Affidavit at Paragraph 12; Exhibit 47 (277) (Ms. Hamshar's resignation letter).

²⁷ Accusation July 13, 2006 at paragraph 6; Weimer Affidavit at Paragraph 2.

²⁸ Slotnick Affidavit at Paragraph 14; Weimer Affidavit at Paragraph 3; Exhibit 50 (341) (memorandum from Nurse Manager Slotnick to Weimer).

related documents.²⁹ On April 2, 2006, Advanced Nurse Practitioner Berner completed her evaluation.³⁰ Advanced Nurse Practitioner Berner found numerous problems with no documentation of any records after clients were assigned in 20 cases, inadequate follow-up was found in 19 cases and delayed follow-up in 6 cases.³¹

In the category of no records, Ms. Berner's report concluded that communicable diseases had been diagnosed in 15 cases (many with positive PPD's - a skin test for tuberculosis), high risk maternal/child health clients comprised 5 cases and there was one case of a client with an abnormal radiology finding who clearly needed follow-up.³² In each of these cases, a lack of contact care and follow-up put clients with communicable diseases at risk for serious illness and also potentially endangered the public if the clients passed an active disease on to another person.³³ Lack of contact and follow-up on high risk maternal/child health clients put those clients at risk for serious consequences such as poor health outcomes with a high potential for child abuse.³⁴

Inadequate follow-up was documented by Advanced Nurse Practitioner Berner in another 19 cases.³⁵ In most cases where follow-up occurred, chart notes consisted entirely of phone calls to clients and failed home visits.³⁶ Seven of the charts were finalized with the chart note stating that the client had failed outreach or failed home visit and that Ms. Hamshar would await client contact.³⁷ Many cases involved clients with positive PPDs for tuberculosis.³⁸ Other cases involved high-risk maternal/child health cases including 4 high risk families: L.P, A.C., A.E., and L.J.³⁹ With regard to the

high risk clients, there was no follow-up with the Office of Children's Services or with primary care providers in an attempt to make contact.⁴⁰

In six cases, all of whom involved clients with positive PPDs for tuberculosis, Advanced Nurse Practitioner Berner determined that follow-up was not documented until one month or more

²⁹ Accusation July 13, 2006 at Paragraph 7; Weimer Affidavit at Paragraph 4; Affidavit of Barbara Berner at Paragraph 2; Exhibit 51 (001122-23) (Letter from Weimer to Berner).

³⁰ Accusation July 13, 2006 at Paragraph 8; Berner Affidavit at Paragraph 4; Weimer Affidavit at Paragraph 5; Exhibit 52 (001129-001137) (Berner's report).

³¹ Accusation July 13, 2006 at Paragraph 8; Berner Affidavit at Paragraph 6; Exhibit 52 at 001130.

³² Accusation July 13, 2006 at Paragraph 9; Exhibit 52 at 001130.

³³ Accusation July 13, 2006 at Paragraph 9; Exhibit 52 at 001130.

³⁴ Accusation July 13, 2006 at Paragraph 9; Exhibit 52 at 001130.

³⁵ Accusation July 13, 2006 at Paragraph 10; Exhibit 52 at 001131.

³⁶ Accusation July 13, 2006 at Paragraph 10; Exhibit 52 at 001131.

³⁷ Accusation July 13, 2006 at Paragraph 10; Exhibit 52 at 001131.

³⁸ Accusation July 13, 2006 at Paragraph 10; Exhibit 52 at 001131.

³⁹ Accusation July 13, 2006 at Paragraph 10; Exhibit 52 at 001131.

⁴⁰ Accusation July 13, 2006 at Paragraph 10; Exhibit 52 at 001131.

after the request for follow-up was initiated.⁴¹ In two of those cases, involving E.S. and P.K., not only was follow-up delayed, but it was inadequate because of Ms. Hamshar's assumption that the clients should initiate contact or attempts to contact the clients were not aggressively detailed.⁴²

Several clients, A.M., L.G., and Z.S., spoke English as a second language and as such were in need of close attention.⁴³ Advanced Nurse Practitioner Berner concluded that Ms. Hamshar, as a public health nurse, should have been more assertive in contacting those clients, obtaining translators and following up in a timely manner.⁴⁴

2. Uncontested Facts in the "Legal Argument" section of Division's motion

A. Uncontested Facts Count I of the Accusation. Ms. Hamshar's Treatment of Tuberculosis Patients.

The role of the public health nurse in tuberculosis management is clearly spelled out in a 2001 publication put out by the Alaska Division of Public Health titled *Tuberculosis Control in Alaska*, which includes a chapter called "The Public Health Nurse's Role in Tuberculosis."⁴⁵ This chapter makes clear the roles and responsibilities of the public health nurse in terms of health education, reporting, contact investigations, monitoring treatment, screening of clients, and specific activities related to surveillance reports, ordering medications, assessing activities and screening and follow-up or new immigrants.⁴⁶

In general, the public health nurse's monitoring activities, once a client has been diagnosed with tuberculosis, includes monitoring medication compliance, ordering medications, health education, organizing and managing directly observed therapy, and monthly evaluations for adverse reaction and any changes in health.⁴⁷

The most commonly used method to check for tuberculosis is the PPD skin test.⁴⁸ Thus, in Ms. Berner's report, patients identified by "+ PPD" have tested positive for tuberculosis⁴⁹

⁴¹ Accusation July 13, 2006 at Paragraph 11; Exhibit 52 at 001130.

⁴² Accusation July 13, 2006 at Paragraph 12; Exhibit 52 at 001131.

⁴³ Accusation July 13, 2006 at Paragraph 11; Exhibit 52 at 001130.

⁴⁴ Accusation July 13, 2006 at Paragraph 11; Exhibit 52 at 001130.

⁴⁵ Accusation at Paragraph 3; Berner Affidavit at Paragraph 5; Exhibit 53.

⁴⁶ Berner Affidavit at Paragraph 5; Exhibit 52 at 001129-30; Exhibit 53.

⁴⁷ Accusation at Paragraph 3; Berner Affidavit at Paragraph 5; Exhibit 52 at 001130; Exhibit 53 at p. 74.

⁴⁸ See 7 A A C 27.213; Exhibit 53 at p. 78.

⁴⁹ Exhibit 52 at 001134-001137.

The 13 tuberculosis patients that Ms. Hamshar failed to maintain any records for are summarized below:⁵⁰

1. B.T. - this patient was assigned to Ms. Hamshar on January 9, 2004, as a referral from the Juneau Pioneers' Home.⁵¹ No chart was made and he was not registered in the Center's patient database system.⁵² No chart or medical records of any kind were found.⁵³

2. J.G. - this patient was referred to the Center on August 6, 2004, the day she gave birth.⁵⁴ She was assigned to Ms. Hamshar on April 9, 2004, three days after delivery.⁵⁵ Ms. Hamshar never attempted to contact G .⁵⁶

3. B.G. - this patient was assigned to Ms. Hamshar on April 7, 2004.⁵⁷ However, there was no chart found or other written record with regard to this patient.⁵⁸

4. K.J. - this patient was assigned to Ms. Hamshar on May 6, 2004.⁵⁹ No chart was located nor could other written records be found on this patient.⁶⁰ A printout of this patient's records was made on January 12, 2005 and is contained at Exhibit 28 (450-451).

5. S.P. - this patient was assigned to Ms. Hamshar on September 18, 2004.⁶¹ Ms. Hamshar never attempted to contact P. Exhibit 5 at 342. His records are contained at Exhibit 10 (936-952).

6. G.L. - this patient was assigned to Ms. Hamshar on July 9, 2004.⁶² Ms. Hamshar's only involvement with this patient allegedly occurred on August 18 and August 27, 2004, but even these entries were not in the chart when Nurse Manager Slotnick reviewed it on January 6, 2005.⁶³ Advanced Nurse Practitioner and Registered Nurse Berner was especially critical of Hamshar's conduct of this patient, who spoke English as a second language.⁶⁴ The records for this patient are contained at Exhibit 14 (958-979).

⁵⁰ Identified with a '+ PPD' and set out in blue in Exhibit 52 at 001134-001137.

⁵¹ Exhibit 2 at 372.

⁵² Exhibit 46 at 368.

⁵³ Exhibit 19 at 363.

⁵⁴ See Exhibit 6 (also under the name of J.Q.) at 877.

⁵⁵ Exhibit 2 at 373; Exhibit 18 at 354.

⁵⁶ Exhibit 5 at 342; Exhibit 35 at 358; Exhibit 46 at 369-370. This patient's records are contained at Exhibit 6 (857-882).

⁵⁷ Exhibit 2 at 373.

⁵⁸ Exhibit 19 at 362; Exhibit 46 at 368-69.

⁵⁹ Exhibit 2 at 373.

⁶⁰ Exhibit 19 at 362; Exhibit 46 at 368.

⁶¹ Exhibit 2 at 373.

⁶² Exhibit 2 at 373.

⁶³ Exhibit 5 at 343; Exhibit 18 at 356.

⁶⁴ Exhibit 52 at 001131.

7. I.C.D. - this patient was assigned to Ms. Hamshar on August 12, 2004.⁶⁵

Ms. Hamshar did no charting and there were no records generated for this patient.⁶⁶ A printout of his records (which had not been updated after August 10, 2004) was generated on January 12, 2005 and is contained at Exhibit 26 (452-453).

8. Z.L. -this patient was assigned to Ms. Hamshar on August 16, 2004.⁶⁷ Ms. Hamshar made no attempt to contact this patient.⁶⁸ This patient's records (which shows no entry after August 13, 2004) are contained at Exhibit 7 (953-957).

9. Z.S. - this patient was assigned to Ms. Hamshar on September 9, 2004.⁶⁹ This is the patient whose family contacted the Center on January 6, 2005 to ask why she had not been started on medication.⁷⁰ There was no documentation of any action taken by Ms. Hamshar. This patient's records are contained at Exhibit 17 (883-935). Because this patient did not speak English, Ms. Hamshar should have been more assertive in establishing contact, obtaining a translator, and following-up in a timely manner.⁷¹

10. M.K. -this patient was assigned to Ms. Hamshar on September 28, 2004.⁷² No chart of any kind was found with regard to this patient.⁷³ This patient's records (which shows no action later than September 22, 2004) are contained at Exhibit 27 (454-455).

11. J.M. -this patient was assigned to Ms. Hamshar on November 9, 2004. Exhibit 2 at 374. Ms. Hamshar never attempted to contact this patient.⁷⁴ Ms. Hamshar had a variety of excuses as to why she made no contact, despite the fact that this patient was "tearful" about her positive test for tuberculosis.⁷⁵ This patient's records are contained at Exhibit 9 (759-765).

12. J.G. - this patient was assigned to Ms. Hamshar on January 4, 2005.⁷⁶ This patient's records, which shows nothing more recent than being initially seen at the Center on January 4, 2005, is contained at Exhibit 54 (456-458).

⁶⁵ Exhibit 2 at 373.

⁶⁶ Exhibit 19 at 362; Exhibit 46 at 368-69.

⁶⁷ Exhibit 2 at 373.

⁶⁸ Exhibit 5 at 342.

⁶⁹ Exhibit 2 at 373.

⁷⁰ Exhibit 5 at 343.

⁷¹ Exhibit 52 at 001131.

⁷² Exhibit 2 at 373.

⁷³ Exhibit 19 at 362.

⁷⁴ Exhibit 5 at 342.

⁷⁵ Exhibit 18 at 354-355; Exhibit 46 at 370.

⁷⁶ Exhibit 2 at 374.

13. B.S. - a referral for this patient, dated December 10, 2004, was located in Ms. Hamshar's office.⁷⁷ The patient was a child with a large positive TB skin test reaction, yet the referral was not entered in the TB referral log nor assigned to a public health nurse.⁷⁸ Ms. Hamshar also failed to adequately follow-up with 10 additional clients (not 11 as stated in the Accusation) with positive PPD's for tuberculosis (identified with a '+ PPD' and set out in green in Exhibit 52), as summarized below:

1. M.N. - this patient was assigned to Ms. Hamshar on February 18, 2004.⁷⁹ This patient's records are contained at Exhibit 30 (718-727). Only two entries were made by Ms. Hamshar: on February 26 and then on March 2, 2004.⁸⁰ Advanced Nurse Practitioner Berner was critical of Ms. Hamshar's failure to have x-rays taken or to examine this patient.⁸¹

2. S.T. - this patient was assigned to Ms. Hamshar on February 27, 2004.⁸² The only encounter from Ms. Hamshar was dated January 10, 2005 and indicated that there had been no contact from the patient since 2/04.⁸³ However, there was no evidence of a contact in February 2004. This patient's records are contained at Exhibit 20 (691-717).

3. A.C. - this patient was assigned to Ms. Hamshar on March 18, 2004.⁸⁴ The patient was a 14 year old child and the only document in the chart was an encounter form.⁸⁵ An entry by Hamshar indicating a telephone call on June 24, 2004, was not in the chart when Nurse Manager Slotnick reviewed it on January 6, 2005.⁸⁶ This patient's records are contained at Exhibit 13 (839-856).

4. A.M. - this patient was assigned to Ms. Hamshar on June 14, 2004.⁸⁷ The records show no documentation that Ms. Hamshar attempted to contact the five year old patient's family.⁸⁸ The family emigrated from Iran in 2000 and the mother was confused about the need for a kindergarten physical and the accompanying paperwork.⁸⁹ This patient's records are contained at

⁷⁷ Exhibit 19 at 363; Exhibit 46 at 369; Exhibit 31 at 1002.

⁷⁸ Exhibit 46 at 369.

⁷⁹ Exhibit 2 at 372.

⁸⁰ Exhibit 19 at 362-63; Exhibit 30 at 725-726.

⁸¹ Exhibit 52 at 001134.

⁸² Exhibit 2 at 372; Exhibit 20 at 708.

⁸³ Exhibit 19 at 361; Exhibit 20 at 707.

⁸⁴ Exhibit 2 at 373.

⁸⁵ Exhibit 18 at 355-356.

⁸⁶ Exhibit 5 at 343.

⁸⁷ Exhibit 2 at 373.

⁸⁸ Exhibit 5 at 342.

⁸⁹ Exhibit 18 at 354.

Exhibit 8 (766-784). Advanced Nurse Practitioner and Registered Nurse Berner concluded that a competent nurse would have been more assertive in establishing contact, obtaining a translator and following up in a timely manner.⁹⁰

5. G.L. - this patient's history is described above. The inadequate follow-up was a request for x-rays on August 18, 2004, which was faxed by Ms. Hamshar on August 27, 2004, with a note stating only that the patient was to contact the Center if therapy was needed.⁹¹

6. A.B. - this patient was assigned to Ms. Hamshar on August 12, 2004.⁹² This was a 14 year old immigrant assigned to Ms. Hamshar for follow-up to a positive TB skin test.⁹³ Since this was a low income child ineligible for Denali Kid Care, Ms. Hamshar should have offered the mother a medical evaluation with Dr. McCabe at the Center when she spoke to her on September 7, 2004 regarding the need for a follow-up medical evaluation.⁹⁴ This patient's records are contained at Exhibit 29 (469-496).

7. C.F. - this patient was assigned to Ms. Hamshar in an undated assignment.⁹⁵ Dr. Anne Standerwick wrote to Ms. Hamshar on October 1, 2004, seeking Ms. Hamshar's recommendations regarding treatment of this patient and enclosing a copy of the chest x-ray report.⁹⁶ Ms. Hamshar never attempted to contact the physician regarding this request. Exhibit 18 at 356. Ms. Hamshar's sole entry was made on October 14, 2004.⁹⁷ However, when the paperwork for this patient was reviewed on January 6, 2005, even that documentation was not in the file.⁹⁸ Additionally, Ms. Hamshar was on annual leave for the entire week of October 11-15, 2004; Ms. Hamshar claimed she made a "date error."⁹⁹ This patient's records are contained at Exhibit 15 (980-984).

8. J.S. - This patient was assigned to Ms. Hamshar on August 3, 2004.¹⁰⁰ Even though this patient called Ms. Hamshar requesting information about TB and follow-up care, and stated that he was experiencing financial hardships, Ms. Hamshar took no action to assist

⁹⁰ Exhibit 52 at 001131.

⁹¹ Exhibit 14 at 965-966; Exhibit 52 at 001135.

⁹² Exhibit 2 at 373.

⁹³ Exhibit 46 at 368.

⁹⁴ Exhibit 46 at 368.

⁹⁵ Exhibit 2 at 374.

⁹⁶ Exhibit 15 at 984.

⁹⁷ Exhibit 15 at 982; Exhibit 5 at 343.

⁹⁸ Exhibit 5 at 343.

⁹⁹ Exhibit 5 at 343; Exhibit 18 at 356.

¹⁰⁰ Exhibit 2 at 373.

the patient with getting a medical evaluation and starting on TB medication.¹⁰¹ Additionally, the records of Ms. Hamshar's telephone calls with the patient on September 29, 2004 and October 27, 2004 were not in the patient's chart when it was reviewed by Nurse Manager Slotnick on January 6, 2005.¹⁰² This patient's records can be found at Exhibit 11 (785-807).

9. P.C. - This patient was assigned to Ms. Hamshar on November 23, 2004.¹⁰³ Although Ms. Hamshar completed a screening form for the patient on December 15, 2004 and cleared him for work, there was no documentation of any discussion of preventative treatment.¹⁰⁴ This patient's records can be found at Exhibit 22 (529-541).

10. A.Y. This patient was assigned to Ms. Hamshar on November 12, 2004.¹⁰⁵ Ms. Hamshar made one attempt to contact him on November 18, 2004 and left him a message¹⁰⁶ Thus, despite the fact that this patient had tuberculosis and congestive heart failure, she only made one attempted outreach to this patient and there is no documentation that she notified the patient's physician of her failed outreach.¹⁰⁷ This patient's records are contained at Exhibit 23 (459-468).

Finally, Count I of the Accusation is also based on Ms. Hamshar's failure to follow-up within one month with six additional clients who had positive PPD's for tuberculosis (identified with a '+ PPD' and set out in yellow in Exhibit 52), as summarized below:

1. E.S. - This patient was assigned to Ms. Hamshar on January 21, 2004.¹⁰⁸ She and her husband arrived from Russia one month prior to being tested at the Center.¹⁰⁹ The clinic nurse informed them on January 14, 2004 that a public health nurse would contact them and answer their questions.¹¹⁰ Ms. Hamshar did not send this patient a letter until February 11, 2004, and, after the patient declined treatment, there was no subsequent follow-up.¹¹¹ This patient's records are contained at Exhibit 32 (728-739). Advanced Nurse Practitioner and Registered Nurse Berner

¹⁰¹ Exhibit 46 at 370.

¹⁰² Exhibit 5 at 343.

¹⁰³ Exhibit 2 at 374.

¹⁰⁴ Exhibit 19 at 361.

¹⁰⁵ Exhibit 2 at 374.

¹⁰⁶ Exhibit 19 at 361.

¹⁰⁷ Exhibit 46 at 367.

¹⁰⁸ Exhibit 2 at 372.

¹⁰⁹ Exhibit 19 at 363.

¹¹⁰ Exhibit 19 at 363.

¹¹¹ Exhibit 19 at 363; Exhibit 52 at 001134.

concluded that Ms. Hamshar's conduct was inadequate because her attempts to contact the patient were not aggressively detailed.¹¹²

2. A.S. - this patient was assigned to Ms. Hamshar on January 21, 2004.¹¹³ He is married to the above referenced patient and they were treated together.¹¹⁴ Ms. Hamshar's follow-up with regard to this patient did not occur until February 12, 2004.¹¹⁵ This patient's records are contained at Exhibit 33 (740-752).

3. P.K. - this patient was assigned to Ms. Hamshar in October 2003.¹¹⁶ The patient was started on TB meds on January 30, 2004.¹¹⁷ The patient received a second bottle on March 12, 2004.¹¹⁸ Although there are encounters in the chart on April 8, 2004 and May 3, 2004, they were not in the chart when Nurse Manager Kate Slotnick reviewed the file on January 6, 2005.¹¹⁹ The notation for May 3, 2004 states that the patient was a no-show and was therefore non-compliant, yet nothing further was done.¹²⁰ This patient's records are contained in Exhibit 12 (808-838). Advanced Nurse Practitioner and Registered Nurse Bemer criticized Ms. Hamshar's assumption that the patient should initiate contact.¹²¹

4. J.D. - this patient was assigned to Ms. Hamshar as B. on November 1, 2004.¹²² Ms. Hamshar met with the patient on October 11 and 27, but did not meet with her again until January 12, 2005.¹²³ This patient's records are contained at Exhibit 24 (542-623).

5. K.D. - This patient was assigned to Ms. Hamshar on November 17, 2004.¹²⁴ Ms. Hamshar had encounters with this patient on November 17 and December 3, 2004 and received the patient's prescription and other necessary paperwork on November 30, 2004 but did not order the patient's medication until January 10, 2005.¹²⁵ This patient's records are contained at Exhibit 25 (497-528).

¹¹² Exhib 152 at 001130-31.

¹¹³ Exhib t 2 at 372.

¹¹⁴ Exhib t 19 at 363.

¹¹⁵ Exhib t 19 at 363; Exhibit 52 at 001134.

¹¹⁶ Exhib 12 at 372; Exhibit 12 at 824, 835.

¹¹⁷ Exhib t 18 at 355.

¹¹⁸ Exhib t 18 at 355.

¹¹⁹ Exhib t 5 at 343.

¹²⁰ Exhib t 18 at 355; Exhibit 52 at 001134.

¹²¹ Exhib t 52 at 001130-31.

¹²² Exhib 12 at 374.

¹²³ Exhib t 19 at 361; Exhibit 52 at 001136.

¹²⁴ Exhib t 2 at 374.

¹²⁵ Exhib t 19 at 362; Exhibit 46 at 366-67; Exhibit 52 at 001136.

6. A.P. - This patient was assigned to Ms. Hamshar on November 26, 2004. Exhibit 2 at 374. Although she received all the necessary paperwork on December 3, 2004, medication was not ordered until January 6, 2005, over a month later.¹²⁶ Even that day's entry is suspect because Ms. Hamshar was on sick leave on January 6, 2005.¹²⁷ This patient's records are contained at Exhibit 21 at (625-647).

B. Uncontested Facts in Count II of the Accusation.

Count II alleges that, based on Advanced Nurse Practitioner and Registered Nurse Berner's report, Ms. Hamshar's failure to maintain any records with regard to approximately seven (actually six) additional (i.e., non-PPD) cases, involving one client with salmonella (L.P.), one client with a sexually transmitted disease (A.C.), and a number of high-risk maternal/child health clients, is grounds for suspension or revocation of Ms. Hamshar's license pursuant under AS 08.68.270(5), AS 08.68.270(7), 12 A A C 44.770(1), 12 A A C 44.770(5), and 12 A A C 44.770(10). Advanced Nurse Practitioner and Registered Nurse Berner concluded that Ms. Hamshar violated all of the above provisions.¹²⁸ Those cases are set out in blue in Exhibit 52 and are summarized below:

1. C.M. - this patient, who was homeless and had an unplanned pregnancy, was assigned to Ms. Hamshar on May 3, 2004 and again on July 21, 2004.¹²⁹ There is no documentation of any outreach or contact made by Ms. Hamshar to this patient.¹³⁰ This patient's records are contained at Exhibit 39 (1058-1072).

2. E.R. and baby- this patient was assigned for parenting support and outreach to Ms. Hamshar on May 28, 2004 and again on July 16, 2004.¹³¹ Despite the fact that this was an eighteen year old single mother who had recently moved to Juneau and needed assistance in obtaining reliable birth control, breastfeeding and parenting support, there was no documentation of any outreach by Ms. Hamshar on either referral.¹³² This patient's records are contained at Exhibit 40 (1115).

3. A.W. (mother of W.L.) - L., an eighteen month old child, was assigned to Ms. Hamshar on November 12, 2004.¹³³ Even though this child had been

¹²⁶ Exhibit 46 at 366.

¹²⁷ Exhibit 19 at 361.

¹²⁸ Exhibit 52 at 001129; Berner Affidavit at Paragraph 7.

¹²⁹ Exhibit 3 at 376-377.

¹³⁰ Exhibit 35 at 359; Exhibit 46 at 364.

¹³¹ Exhibit 3 at 376-377.

¹³² Exhibit 35 at 359; Exhibit 46 at 366.

¹³³ Exhibit 3 at 378.

hospitalized with burned hands and there was a concern about the mother's capability, there was no documentation of any outreach by Ms. Hamshar.¹³⁴

4. P.S. — this patient, a young child referred from the Office of Children's Services, was assigned to Ms. Hamshar on November 17, 2004.¹³⁵ The child was not registered in the patient data base and no chart could be found despite the fact that there was an initial home visit with this patient.¹³⁶ This patient's records are contained at Exhibit 45 (1003-1004).

5. L.P. — this one year old child with salmonella was referred to Ms. Hamshar on December 2, 2004 but there was no documentation of any follow-up, the patient was not registered in the patient database, and Ms. Hamshar failed to contact the patient's family.¹³⁷ This patient's records are contained at Exhibit 34 (985).

6. A.C. — this patient, discussed in more detail below, was referred to Ms. Hamshar for a sexually transmitted disease on December 31, 2004.¹³⁸ There was no documentation in the chart of any outreach or contact by Ms. Hamshar.¹³⁹ This patient's complete medical records are contained at Exhibit 38 (653-690).

C. Uncontested Facts in Count III of the Accusation

Count III alleges that, based on Advanced Nurse Practitioner and Registered Nurse Berner's report, Ms. Hamshar's failure to adequately follow-up with approximately eight (actually nine) additional (that is, non-PPD) cases, including four high risk families (L.P., A.C., A.E., and L.J.) is grounds for suspension or revocation of Ms. Hamshar's license pursuant of AS 08.68.270(5), AS 08.68.270(7), 12 A A C 44.770(1), 12 A A C 44.770(5), 12 A A C 44.770(10), and 12 A A C 44.770(11) (defining unprofessional conduct as leaving a nursing assignment without properly notified appropriate personnel). Advanced Nurse Practitioner and Registered Nurse Berner concluded that Ms. Hamshar violated all of the above provisions.¹⁴⁰ Those cases are set out in green in Exhibit 52 and are discussed below:

1. L.P. -- this patient with post partum depression and a baby with renal abnormalities was assigned to Hamshar on January 28, 2004.¹⁴¹ Despite the fact that the patient was

¹³⁴ Exhibit 35 at 360; Exhibit 46 at 369.

¹³⁵ Exhibit 3 at 377.

¹³⁶ Exhibit 35 at 360; Exhibit 46 at 369.

¹³⁷ Exhibit 19 at 363; Exhibit 46 at 366.

¹³⁸ Exhibit 35 at 358; Exhibit 52 at 001137.

¹³⁹ Exhibit 35 at 358; Exhibit 52 at 001137.

¹⁴⁰ Exhibit 52 at 001129; Berner Affidavit at Paragraph 7.

¹⁴¹ Exhibit 3 at 375.

homeless, low functioning, and had a low tolerance for the baby's crying, only three encounters in February 2004 were charted.¹⁴² No further outreach efforts were made after February 27, 2004 when Hamshar left a voice mail message.¹⁴³ This patient's records are contained at Exhibit 36 (986-1001).

2. C.P., son of B.W. - this patient was assigned to Ms. Hamshar on February 5, 2004.¹⁴⁴ This was a post partum referral with the patient's consent.¹⁴⁵ Even though the family declined services on February 18, 2004,¹⁴⁶ given that the mother initiated the request, Ms. Hamshar should have followed through with at least a home visit.¹⁴⁷ The records of both the mother and son are contained at Exhibit 37 (442-449).

3. A.C. and T. — this single mother with financial and support issues were assigned to Ms. Hamshar on April 2, 2004 and again on April 27, 2004.¹⁴⁸ There was no documentation by Ms. Hamshar of any attempts at outreach or contact with regard to the first referral.¹⁴⁹ A scheduled home visit on May 11, 2004 was unsuccessful because no one was at home.¹⁵⁰ A second home visit on June 10, 2004 was unsuccessful because the mother was not at home.¹⁵¹ Ms. Hamshar made no further attempt to contact this family, even though they had limited resources and no phone.¹⁵² This patient's records are contained at Exhibit 38 (653-690).

4. A.E. - this patient with concerns about sanitation, home environment, and depression was referred to Ms. Hamshar on April 27, 2004.¹⁵³ Ms. Hamshar made one home visit and was refused entry by the daughter; Ms. Hamshar left a phone message the next day.¹⁵⁴ Ms. Hamshar failed to do any further follow up nor did she contact any agencies, such as the Office of Children's Services.¹⁵⁵

5. C.P. — this pregnant eighteen year old was assigned to Ms. Hamshar on July 9, 2004.¹⁵⁶ Two attempts at outreach in July and August in 2004 were unsuccessful because Ms.

¹⁴² Exhibit 35 at 358; Exhibit 52 at 001134.

¹⁴³ Exhibit 46 at 367-368.

¹⁴⁴ Exhibit 3 at 375.

¹⁴⁵ Exhibit 35 at 358.

¹⁴⁶ Exhibit 37 at 449.

¹⁴⁷ Exhibit 52 at 001134.

¹⁴⁸ Exhibit 3 at 375- 376.

¹⁴⁹ Exhibit 35 at 358.

¹⁵⁰ Exhibit 35 at 358.

¹⁵¹ Exhibit 35 at 358.

¹⁵² Exhibit 35 at 358; Exhibit 52 at 001134.

¹⁵³ Exhibit 3 at 376.

¹⁵⁴ Exhibit 46 at 365.

¹⁵⁵ Exhibit 46 at 365-366; Exhibit 52 at 001134.

¹⁵⁶ Exhibit 3 at 377.

Hamshar was unable to locate the proper address.¹⁵⁷ This patient's records are contained at Exhibit 42 (1073-1114).

6. L.R. and baby (J.V.) — this new mother interested in services was assigned to Ms. Hamshar on July 14, 2004.¹⁵⁸ On July 16, 2004, Ms. Hamshar called the mother to set up a home visit. On July 19, Ms. Hamshar attempted a home visit but no one answered the door and on July 23 Ms. Hamshar documented that she failed in her outreach.¹⁵⁹ No further outreach was made by Ms. Hamshar.¹⁶⁰ Both the July 19, 2004 and the July 23, 2004 encounter forms were not turned in to the data entry clerk until January 10, 2005.¹⁶¹ The records for this patient are contained at Exhibit 41 (1005-1057).

7. C.M. — this patient with abnormal mammogram results was assigned to Ms. Hamshar on July 19, 2004.¹⁶² The referral was from Valley Medical Care, which stated that the patient's phone had been disconnected and that she needed to be notified of her abnormal mammogram results and the need for a diagnostic mammogram.¹⁶³ Ms. Hamshar made a home visit and left a message for the patient to contact her physician.¹⁶⁴ However, Ms. Hamshar did not contact the patient's treating physician to assure that the message was received by the patient.¹⁶⁵ This patient's records are contained at Exhibit 43 (648-652).

8. L.J. - this premature baby whose mother abused cocaine was assigned to Ms. Hamshar on July 23, 2004.¹⁶⁶ Ms. Hamshar's involvement included an unsuccessful home visit on July 26, a letter written on August 31 and another unsuccessful home visit on September 16, 2004.¹⁶⁷ Ms. Hamshar never attempted to call the patient's mother on the phone or contact the patient's physician to coordinate care, nor did she contact the Office of Children's Services.¹⁶⁸ This patient's records are contained at Exhibit 44 (426-441).

¹⁵⁷ Exhib t 35 at 359; Exhibit 52 at 001135.

¹⁵⁸ Exhib t 3 at 376.

¹⁵⁹ Exhib t 35 at 359; Exhibit 46 at 367.

¹⁶⁰ Exhib t 35 at 359; Exhibit 46 at 367.

¹⁶¹ Exhib t 35 at 359; Exhibit 46 at 367.

¹⁶² Exhib t 3 at 377.

¹⁶³ Exhib t 35 at 359; Exhibit 46 at 366.

¹⁶⁴ Exhib t 35 at 359; Exhibit 46 at 366.

¹⁶⁵ Exhib 146 at 366; Exhibit 52 at 001135.

¹⁶⁶ Exhib t 3 at 377.

¹⁶⁷ Exhib t 35 at 359-360; Exhibit 46 at 364.

¹⁶⁸ Exhib t 35 at 359-360; Exhibit 46 at 364; Exhibit 52 at 001135.

9. T.I. — this patient with head lice was assigned to Hamshar on December 9, 2004.¹⁶⁹ Although Ms. Hamshar's entry of December 8, 2004 indicated that she spoke to the patient's mother, there was no documentation of it when the file was reviewed by Nurse Manager Kate Slotnick on January 6, 2005; additionally, Ms. Hamshar was on sick leave December 6-13, 2004.¹⁷⁰ Finally, the mother did not recall receiving a phone call from Ms. Hamshar.¹⁷¹ This patient's records are contained at Paragraph 16 (753-758).

D. Uncontested Facts Count IV of the Accusation

Advanced Nurse Practitioner and Registered Nurse Berner's report concluded that Ms. Hamshar's grossly inadequate records with regard to T.I., S.T. and C.F., was grounds for suspension or revocation of Ms. Hamshar's license pursuant to AS 08.68.270(7) and 12 A A C 44.770(10).¹⁷² Advanced Nurse Practitioner and Registered Nurse Berner concluded that Ms. Hamshar violated all of the above provisions.¹⁷³ With regard to T.I. as described above, her mother could not recall having any telephone calls or communication with a public health nurse during the time Ms. Hamshar documented her communication with the patient.¹⁷⁴ Also, Ms. Hamshar's only documented entries were on days for which she was on leave and not at the Center.¹⁷⁵ With regard to S.T., as described above, Ms. Hamshar wrote in an entry dated January 10, 2005, that there had been no contact from the patient since February 2004, yet there was no documentation by Ms. Hamshar of a communication with the client in February 2004.¹⁷⁶ Finally, as described above, with regard to C.F., Ms. Hamshar's only documented entry was on a day in which she was on leave and not at the Center.¹⁷⁷

III. Discussion

A. Summary Adjudication

Summary adjudication may be granted if there is no genuine dispute as to any material fact, so that the case may be resolved as a matter of law.¹⁷⁸ In this case, no material facts are in dispute. Because Ms. Hamshar did not respond to the Division's motion for summary judgment, the facts

¹⁶⁹ Exhibit 5 at 343; Exhibit 35 at 360; Exhibit 18 at 356-57.

¹⁷⁰ Exhibit 3 at 378.

¹⁷¹ Exhibit 18 at 357; Exhibit 35 at 360.

¹⁷² Accusation at Paragraph 8

¹⁷³ Exhibit 52 at 001129; Berner Affidavit at Paragraph 7.

¹⁷⁴ Exhibit 52 at 001131; Accusation at Paragraph 13.

¹⁷⁵ Accusation at paragraph 14.

¹⁷⁶ Exhibit 52 at 001131; Accusation at Paragraph 13.

¹⁷⁷ Accusation at paragraph 14; Exhibit 5 at 343.

asserted in the Division's motion are uncontested and are supported by the evidence that the Division has provided.¹⁷⁹ In order to prevent the facts asserted in and supported by documentary evidence with the Division's motion from being accepted as uncontested, Ms. Hamshar would have had to set forth specific assertions of fact and shown that she could produce evidence reasonably tending to dispute or contradict the Division's evidence and thus demonstrate that a material issue of fact existed.¹⁸⁰ Ms. Hamshar made no specific assertions of fact in her Notice of Defense, and she did not respond to the Division's motion.¹⁸¹ The only issue in this case is about whether, as a matter of law, the sanction against Ms. Hamshar's license that has been requested by the Division, is appropriate, based on the Division's uncontested assertions of fact.

Imposition of a disciplinary sanction, and the nature of the sanction imposed, are within the discretion of the Board. The available disciplinary sanctions, which may be imposed singly or in combination, include permanent revocation, suspension, censure, letter of reprimand, probation with requirements, limitations or conditions on the license, or a civil fine. In determining whether imposition of a disciplinary sanction is appropriate the Board must be consistent. To maintain consistency, significantly different outcomes in cases involving similar situations must be explained. The Board's disciplinary authority is governed by Alaska Statute 08.68.270 and Alaska Statute 08.68.275.

A.S. 08.68.270. Grounds for denial, suspension, or revocation.

The board may deny, suspend, or revoke the license of a person who

- (1) has obtained or attempted to obtain a license to practice nursing by fraud or deceit;
- (2) has been convicted of a felony or other crime if the felony or other crime is substantially related to the qualifications, functions or duties of the licensee;
- (3) habitually abuses alcoholic beverages, or illegally uses controlled substances;
- (4) has impersonated a registered or practical nurse;
- (5) has intentionally or negligently engaged in conduct that has resulted in a significant risk to the health or safety of a client or in injury to a client;
- (6) practices or attempts to practice nursing while afflicted with physical or mental illness, deterioration, or disability that interferes with the individual's performance of nursing functions;

¹⁷⁸ *E.g., Smith v. Dep't of Revenue*, 790 P.2d 1352, 1353 (Alaska 1990).

¹⁷⁹ *French v. Jadon, Inc.*, 911 P.2d 20, 23 (Alaska 1996).

¹⁸⁰ *French v. Jadon, Inc.*, 911 P.2d 20, 23 (Alaska 1996).

¹⁸¹ Notice of Defense August 2, 2006.

- (7) is guilty of unprofessional conduct as defined by regulations adopted by the board;
- (8) has wilfully or repeatedly violated a provision of this chapter or regulations adopted under it;
- (9) is professionally incompetent;
- (10) denies care or treatment to a patient or person seeking assistance if the sole reason for the denial is the failure or refusal of the patient or person seeking assistance to agree to arbitrate as provided in AS 09.55.535(a).

Sec. 08.68.275. Disciplinary sanctions.

(a) The board may take the following disciplinary actions singly or in combination:

- (1) permanently revoke a license or permit to practice;
- (2) suspend a license for a stated period of time;
- (3) censure a licensee;
- (4) issue a letter of reprimand;
- (5) impose limitations or conditions on the professional practice of a licensee;
- (6) impose peer review;
- (7) impose professional education requirements until a satisfactory degree of skill has been attained in those aspects of professional practice determined by the board to need improvement;
- (8) impose probation and require the licensee to report regularly to the board upon matters involving the basis for the probation;
- (9) accept a voluntary surrender of a license.

(b) The board may withdraw probation status if it finds that the deficiencies that required the sanction have been remedied.

(c) The board may summarily suspend a license before final hearing or during the appeals process if the board finds that the licensee poses a clear and immediate danger to the public health and safety. A person whose license is suspended under this section is entitled to a hearing conducted by the office of administrative hearings (AS 44.64.010) within seven days after the effective date of the order. If, after a hearing, the board upholds the suspension, the licensee may appeal the suspension to a court of competent jurisdiction.

(d) The board may reinstate a license that has been suspended or revoked if the board finds, after a hearing, that the applicant is able to practice with skill and safety.

(e) The board may return a license that has been voluntarily surrendered if the board determines that the licensee is competent to resume practice and that the applicable renewal fees are paid.

(f) The board shall seek consistency in the application of disciplinary sanctions. A significant departure from prior decisions involving similar situations shall be explained in the findings of fact or order.

The Board's disciplinary regulations state that the Board will, in its discretion, revoke a license if the licensee either intentionally or negligently engages in conduct that results in a significant risk to health or safety of a client or injury to a client or engages in unprofessional conduct if the health, safety or welfare of another person is placed at risk.¹⁸² Although the Board has the authority to exercise its discretion and impose a lesser sanction in this case, permanent revocation should be imposed in order to protect the public interest, to preserve the integrity and ethics of the nursing profession, to affirm professional standards for registered nurses and to act as a deterrent to licensees who fail to conform to professional standards.

The undisputed facts show that Ms. Hamshar engaged in unprofessional conduct which placed the health, safety and welfare of her clients and others at risk, and that her continued practice of nursing would present a significant health risk to the public. Ms. Hamshar has not provided any explanation for her many documented violations professional nursing standards. As the Division points out in its motion, many of the clients assigned to Ms. Hamshar who did not receive adequate assessment, treatment and follow up had, or were at risk for, communicable diseases. As a result of Ms. Hamshar's unprofessional lapses, these clients were put to additional risk for serious consequences, including active tuberculosis, salmonella and sexually transmitted diseases. Furthermore, the public was put at additional risk from these diseases being passed on from these clients to their families and other contacts in the community.

The undisputed facts show that several children who were very high risk for health problems or from high risk families were not evaluated or followed to prevent potentially serious outcomes such as failure to thrive, child abuse and additional health problems as a result of Ms. Hamshar's unprofessional conduct. Patients with latent tuberculosis infections were not adequately followed up for preventive therapy that could have all but eliminated their risk for developing active disease at some point in their lives and minimized the risk of their passing the disease on to others around them. Additionally, a client with an abnormal radiology study was put at risk by not receiving adequate and timely follow-up for additional tests that could have meant a threat to her life.

Ms. Hamshar can best be deterred from further violating the law and engaging in similar conduct in the future by removing her professional license. This sanction is not inconsistent with the

¹⁸² 12 A A C 44.720(a)(7),(8).

Board's decisions in similar cases.¹⁸³ The undisputed facts of this case justify permanent revocation of Ms. Hamshar's license based on her violations of AS 08.68.

IV. Conclusion

The undisputed facts of this case show that the Division correctly requested permanent revocation of Ms. Hamshar's license under AS 08.68.275(a)(1).

V. Order

The Division's motion for summary adjudication is granted. This case will not be scheduled for an evidentiary hearing. Ms. Hamshar's Alaska Registered Nurse License, No. 18021, is permanently revoked.

DATED: August 16, 2007.

By: Mark T. Handley
Administrative Law Judge

¹⁸³ See For Example: *In the matter of Steven Medley, R.N.* Case Nos. 2300-93-008 & 2300-96-004 & //; *the Matter of Polon*, Case Nos. 2304-03-005.

Adoption

On behalf of the Alaska Board of Nursing, the undersigned adopts this decision in the matter of Donna Hamshar, OAH case number 06-0555-NUR, license number NUR 18021, as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 19th day of September, 2007.

By: Catherine A. Giessel
Board of Nursing Chair

The undersigned certifies that this date an exact copy of the foregoing was provided to the following individuals:

Case Parties
10/8/07