



**Department
of Health**

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

LISA J. PINO, M.A., J.D.
Executive Deputy Commissioner

January 4, 2021

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Hiten K. Lakhani, M.D.
445 Route 304
Bardonia, New York 10954

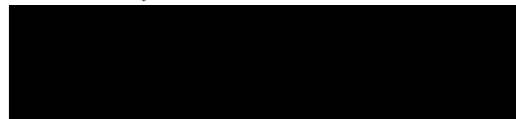
Re: License No. 201374

Dear Dr. Lakhani:

Enclosed is a copy of the vacated New York State Board for Professional Medical Conduct (BPMC) Order No. 21-002. This vacatur order will go into effect January 11, 2021.

Please direct any questions to: Board for Professional Medical Conduct, Riverview Center, 150 Broadway, Suite 355, Albany, New York, 12204, telephone # 518-402-0846.

Sincerely,



Michael S. Jakubowski, M.D.
Interim Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: John G. Martin, Esq.
Garfunkel Wild, P.C.
111 Great Neck Road
Great Neck, New York 11021

IN THE MATTER
OF
HITEN LAKHANI, M.D.

VACATUR
ORDER

Upon the proposed Application for a Vacatur Order Pursuant to N.Y. Pub. Health Law § 230(10)(g) of HITEN LAKHANI, M.D. (LICENSEE), which is made a part of this Vacatur Order, it is agreed to and

ORDERED, that the attached Application, and its terms, are adopted and SO ORDERED, and it is further

ORDERED, that this Vacatur Order shall be effective upon issuance by the Board, either

- by mailing of a copy of this Modification Order, either by first class to Respondent at the address in the attached Application or by certified mail to Respondent's attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATE: 1/01/2021


THOMAS T. LEE, M.D.
Interim Chair
State Board for Professional Medical Conduct

1

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
HITEN LAKHANI, M.D.

APPLICATION
FOR
VACATUR
ORDER

HITEN LAKHANI, M.D., represents that all of the following statements are true:

That on or about November 14, 1995, I was licensed to practice as a physician in the State of New York, and issued License No. 201374 by the New York State Education Department.

My current address is 445 Route 304, Bardonia, New York 10954, and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I am currently subject to the Determination and Order of the Administrative Review Board (No. 20-128), issued on May 15, 2020 which affirmed the misconduct finding in the Determination and Order of the Hearing Committee (No. 20-003), issued on January 2, 2020 that I had violated NYS Ed. L. 6530 (9) (d)(i). The Hearing Committee's misconduct finding was based on my criminal conviction on December 5, 2018 in the Clarkstown Justice Court, Rockland County, New York of one count of sexual abuse, second degree (Penal Law 130.60 [2]). On December 17, 2020, the Appellate Term of the Supreme Court of the State of New York for the 9th & 10th Judicial District (Docket No. 2019-1121 RO CR) reversed my conviction and remitted the matter to Justice Court for a new trial. Attached as Appendix A is the Decision & Order of the Appellate Term.

Pursuant to Public Health Law § 230 (10)(g), I make this application to vacate Board orders No. 20-128 and No. 20-003, as circumstances have occurred subsequent to the issuance of these orders which warrant reconsideration thereof, and specifically that the criminal conviction on which these orders were based has recently been reversed by the Appellate Term.

The sanction imposed in the Determination and Order of the Administration Review Board (No. 20-128) was a license revocation.

From the effective date of this Vacatur Order, Board orders No.20-128 and No. 20-003 shall be vacated in their entirety.

DATE 12/30/20


HITEN LAKHANI, M.D.
RESPONDENT

The undersigned agree to Respondent's attached Application for Vacatur Order and to its proposed penalty, terms and conditions.

12-30-2020

DATE: _____


JOHN G. MARTIN, ESQ.
Attorney for Respondent

DATE: 12/30/20


TIMOTHY J. MAHAR
Deputy Counsel
Bureau of Professional Medical Conduct

DATE: 12/31/2020


PAULA M. BREEN
Director
Office of Professional Medical Conduct

Appendix A

APPELLATE TERM OF THE SUPREME COURT
OF THE STATE OF NEW YORK FOR THE 9TH & 10TH JUDICIAL DISTRICTS

Argued - September 17, 2020 Term

THOMAS A. ADAMS, J.P.
BRUCE E. TOLBERT
TERRY JANE RUDERMAN, JJ.

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DECISION & ORDER

The People of the State of New York, Respondent, v
Hiton Lakhani, Appellant.

Appellate Term Docket No.
2019-1121 RO CR

Lower Court # 16050426
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Larkin, Ingrassia & Topercmayster, L.L.P. (John Ingrassia of counsel), for appellant.

Rockland County District Attorney (Tina L. Guccione of counsel), for respondent.

Appeal from a judgment of the Justice Court of the Town of Clarkstown, Rockland County (David M. Ascher, J.), rendered July 11, 2019. The judgment convicted defendant, upon a jury verdict, of sexual abuse in the second degree, and imposed sentence.

ORDERED that the judgment of conviction is reversed, on the law and as a matter of discretion in the interest of justice, and the matter is remitted to the Justice Court for a new trial.

Insofar as is relevant to this appeal, in May 2016, a misdemeanor information was filed charging defendant with sexual abuse in the second degree (Penal Law § 130.60 [2]). The accusatory instrument alleged that, in August 2012, defendant lifted up the shirt of the complainant, who was less than 14 years old at the time, touched her breasts with his fingers, took a photograph of himself touching her, and grabbed the complainant's hand and placed it on his body somewhere "lower than the defendant's stomach, hairy, dry and felt like skin." Following a jury trial, defendant was convicted of sexual abuse in the second degree and was sentenced to, among other things, 30 days in jail.

On appeal, defendant contends that he was denied a fair trial because (1) testimony by the complainant's sister was improperly allowed into evidence, (2) the prosecutor made improper comments during summation regarding the testimony of the prompt outcry witnesses, (3) the prosecutor improperly cross-examined defendant, (4) the prosecutor made improper comments during summation which shifted the burden of proof, (5) the Justice Court improperly allowed the People to present a rebuttal expert witness and that, upon cross-examination, that witness's testimony improperly vouched for the credibility of the complainant, (6) the Justice Court improperly

December 17, 2020

Page: 1

PEOPLE v LAKHANI, HITEN

precluded character witness testimony, (7) the Justice Court failed to provide a curative instruction after it struck a portion of the complainant's mother's testimony, (8) the Justice Court improperly redacted the complainant's mental health records, and (9) the People failed to produce all of the complainant's mental health records. Defendant also contends that the evidence was legally insufficient, the verdict was against the weight of the evidence, he was denied the effective assistance of counsel, and the sentence was unduly harsh and excessive.

Defendant's legal sufficiency contention is unpreserved for appellate review since his trial attorney did not raise, at trial, the specific arguments made in support of this contention on appeal (see CPL 470.05 [2]; *People v Hawkins*, 11 NY3d 484, 491-492 [2008]; *People v Hines*, 97 NY2d 56, 61 [2001]; *People v Gray*, 86 NY2d 10 [1995]). However, since there is no preservation requirement associated with defendant's contention that the verdict was against the weight of the evidence, this court necessarily must determine whether all of the elements of the crime as charged were proven beyond a reasonable doubt as part of its weight of the evidence review (see *People v Danielson*, 9 NY3d 342, 348-349 [2007]; *People v Thiel*, 134 AD3d 1237 [2015]). As a different verdict would not have been unreasonable here (see *People v Zephyrin*, 52 AD3d 543 [2008]), given that the testimony of the complainant and defendant presented a "classic he-said she-said credibility determination for the [trier of fact] to resolve" (*People v Kiah*, 156 AD3d 1054, 1056 [2017] [internal quotation marks omitted]), we "must, like the trier of fact below, 'weigh the relative probative force of conflicting testimony and the relative strength of conflicting inferences that may be drawn from the testimony'" (*People v Bleakley*, 69 NY2d 490, 495 [1987], quoting *People ex rel. MacCracken v Miller*, 291 NY 55, 62 [1943]).

Upon the exercise of our factual review power (see CPL 470.15 [5]; *People v Danielson*, 9 NY3d at 348-349), while according great deference to the jury's opportunity to view the witnesses, hear their testimony, observe their demeanor, and assess their credibility (see *People v Mateo*, 2 NY3d 383, 410 [2004]; *People v Bleakley*, 69 NY2d at 495), we are satisfied that the verdict convicting defendant of sexual abuse in the second degree was not against the weight of the evidence (see *People v Romero*, 7 NY3d 633, 643-646 [2006]).

Defendant's arguments that he was denied a fair trial because of the redaction of the complainant's medical records and the People's failure to produce all of the records (argument numbers 8 and 9) are unpreserved for appellate review as defendant's trial attorney never objected thereto in the Justice Court, and we decline to review these arguments in the interest of justice. With respect to argument numbers 1, 2, 3, 6 and 7, we find that they are unpreserved for appellate review since no objections were made thereto in the Justice Court (see CPL 470.05 [2]). We note that a "motion pursuant to CPL 330.30 does not preserve for . . . review a contention that is not otherwise preserved" (*People v Calkins*, 1 AD3d 1021, 1022 [2003]; see *People v Callistro*, 146 AD3d 795, 797 [2017]; *People v Boley*, 116 AD3d 965, 966 [2014]). In any event, upon a review of these arguments in the interest of justice, we find that they lack merit.

We find, however, that defendant was denied a fair trial due to errors made by the prosecutor (argument number 4), which we review as a matter of discretion in the interest of justice, and by his trial attorney (argument number 5). In order to rebut the testimony of defendant's forensic psychiatrist, the People presented the testimony of a licensed social worker who was qualified "to testify as an expert as to the issue of forensic interviewing and best practices," which apparently

included the topics of false memories and suggestibility. The People's examination of this witness was limited to the aforementioned topics. However, on cross-examination, defendant's trial attorney repeatedly asked the witness questions regarding scenarios similar to the facts at bar—concerning when a child makes an outcry of sexual abuse and then does not mention it again for several years, after which the parent repeatedly asks the child about it but the child does not want to talk about it—which brought up the topic of original trace memories. The witness finally stated that “the original trace memory is the original memory. Even if this person, this adult . . . is trying to put something else there, is asking about it, it's not going to change what that original trace memory was. That's there. That's encoded.” We find that this testimony clearly bolstered the complainant's testimony.


Upon her cross-examination of defendant, the prosecutor repeatedly asked whether the complainant had lied and to explain why the complainant would have lied. However, at no time during defendant's direct testimony did he state that the complainant had lied. We note that defendant's trial attorney did not object to this line of questioning. The prosecutor also commented during her summation that defendant could not think of any reason why the complainant would have made up her allegations, to which defendant's trial attorney failed to object. Assuming that such questioning and comment by the prosecutor served to shift the burden of proof, we find that such error was not ameliorated by the Justice Court's subsequent charge to the jury regarding the burden of proof.

The aforementioned acts and omissions by defendant's trial attorney were “so ‘egregious and prejudicial’ as to deprive defendant of his constitutional right” to the effective assistance of counsel (*People v Turner*, 5 NY3d 476, 480 [2005]; *People v Caban*, 5 NY3d 143, 152 [2005]). In our opinion, the trial, viewed as a whole, was not fair (*see People v Ozuna*, 7 NY3d 913, 915 [2006]); it is clear that the representation defendant received from his trial attorney fell short of an objective standard of reasonableness (*see People v Turner*, 5 NY3d at 485) and, thus, defendant was not provided with meaningful representation (*see NY Const*, art I, § 6; *People v Caban*, 5 NY3d at 155-156; *People v Ford*, 86 NY2d 397 [1995]; *People v Johnson*, 71 AD3d 1048 [2010]; *see also US Const Amend VI*; *Strickland v Washington*, 466 US 668 [1984]). Defendant's trial attorney's deficient performance clearly prejudiced the defense (*see Strickland v Washington*, 466 US at 687-688). In view of the foregoing, we pass on no other issue.

Accordingly, the judgment of conviction is reversed and the matter is remitted to the Justice Court for a new trial.

ADAMS, P.J., TOLBERT and RUDERMAN, JJ., concur.

ENTER:


Paul Kenny
Chief Clerk