Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

**Dates:** 02/01/2020 - 09/01/2020

**Medical Practitioner’s name:** Dr Daniel WALDSCHUTZ

**GMC reference number:** 6154676

**Primary medical qualification:** MD 2006 Universitat Wien

**Type of case**
New - Misconduct

**Outcome on impairment**
Not Impaired

**Summary of outcome**
No action (warning not considered)

**Tribunal:**

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<th>Role</th>
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<tr>
<td>Legally Qualified Chair</td>
<td>Mr Piers Doggart</td>
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<td>Medical Tribunal Members:</td>
<td>Dr Leigh-Anne Hill,</td>
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<td></td>
<td>Dr Nisreen Booya</td>
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<td>Tribunal Clerk:</td>
<td>Laurence Millea</td>
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**Attendance and Representation:**

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<th>Medical Practitioner:</th>
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<td>Medical Practitioner’s Representative:</td>
<td>Mr Tom Day, Counsel,</td>
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<td></td>
<td>instructed by MDU</td>
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<td>GMC Representative:</td>
<td>Mr Ciaran Rankin, Counsel</td>
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**Attendance of Press / Public**

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held in public.
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Overarching Objective

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

Determination on Facts - 09/01/2020

Background

1. Dr Waldschutz qualified in 2006 with an MD from the University of Vienna, coming to the United Kingdom in 2007 and completing his foundation training. Thereafter, Dr Waldschutz worked initially as a Senior House Officer ('SHO') and later as a Clinical Fellow in Intensive Care. He is currently a CT1 trainee in Anaesthesia at Ipswich Hospital, a post he has held since August 2019.

2. The allegation that has led to Dr Waldschutz’s hearing can be summarised as follows. On 28 and 29 November 2017, whilst participating in the Membership of the Royal College of Physicians of the United Kingdom ('MRCP(UK)') Part 2 Written Examination, it is asserted that Dr Waldschutz read and copied the work of another candidate. The examination, which is made up of three papers, is one of three examinations that make up the MRCP(UK) Diploma. Achieving the MRCP(UK) Diploma is a requirement for trainees entering year three of speciality training (ST3) in medicine, and it is also advantageous for other specialities in the UK.

3. MRCP(UK) uses software, the Anomaly Monitoring System ('AMS'), to flag copying or collusion by looking for suspicious levels of shared correct answers between candidates. If a pair of candidates is identified as having an unusually high proportion of similar correct answers, then a further investigation is carried out by establishing the centres where the candidates sat, the seating plan and any other information that may be provided by staff administering and invigilating the examination. If there is sufficient evidence of possible copying or collusion, then the candidates involved will be contacted and the formal MRCP(UK) Misconduct Regulations may be invoked.

4. Following the conclusion of the MRCP(UK) Part 2 written exam on 28 and 29 November 2017, Dr Waldschutz was identified by the AMS as part of an anomalous pair with another candidate ('Candidate A'). The analysis showed that across the three papers, each of which contained 90 questions (so 270 in total), Dr Waldschutz answered 144 correctly, Candidate A answered 135 correctly, and that they shared 109 correct answers. Further analysis was undertaken which showed the two candidates also shared 72 incorrect answers. Subsequent analysis of the seating plan showed that the two candidates sat side-by-side for the three papers. The Chief Invigilator’s report recorded that Dr Waldschutz had been observed looking round and was easily distracted, and...
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suggested that he had been spoken to about this during the examination. MRCP(UK) concluded that this represented possible evidence of misconduct and decided to investigate this under the Misconduct Regulations. There was no corroborating evidence to suggest misconduct on the part of the other candidate identified by the AMS.

5. An investigation was conducted by the MRCP(UK) Policy Team. The examination results for Dr Waldschutz were withheld and he was asked to provide comments about the evidence of possible misconduct. Dr Waldschutz denied that any misconduct had taken place. A misconduct hearing panel was therefore convened to consider the case in more detail. The hearing panel took place and concluded that the allegation of misconduct had been found proven.

6. The initial concerns were raised with the GMC on 18 July 2018, when a Policy Officer from MRCP(UK) contacted the GMC Fitness to Practise Investigation Unit to advise of the MRCP(UK) investigation and its findings. Following a fitness to practise investigation by the GMC, the case was referred to MPTS.

The Outcome of Applications Made during the Facts Stage

7. The Tribunal determined to refuse the application made by Mr Day, Counsel, on behalf of Dr Waldschutz, to exclude certain documentary evidence from the proposed GMC document bundle, under Rule 34(1) of the General Medical Council (‘GMC’) (Fitness to Practise) Rules 2004, as amended (the Rules). The Tribunal’s full decision on the application is included at Annex A.

The Allegation and the Doctor’s Response

8. The Allegation made against Dr Waldschutz is as follows:

That being registered under the Medical Act 1983 (as amended):

1. On 28 and 29 November 2017, whilst participating in the MRCP(UK) Part 2 Written Examination you:
   a. read the work of another candidate;
      
      To be determined
   b. copied the work of another candidate.
      
      To be determined

2. You knew that the answers provided in your exam papers were:
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a. not your own;

To be determined

b. those of another candidate.

To be determined

3. Your actions as described at paragraph 1 were dishonest by reason of paragraph 2.

To be determined

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct

To be determined

Factual Witness Evidence

9. The Tribunal received evidence on behalf of the GMC from the following witnesses:

- Ms B, Head of the Research Unit at MRCP(UK), in person;
- Ms C, Senior Examinations Administrator from December 2014 at the Royal College of Physicians for MRCP(UK) as part of the Federation of Royal Colleges of Physicians, and Chief Invigilator for the MRCP(UK) examinations on 28 and 29 November 2017.

10. The Tribunal also received evidence on behalf of the GMC in the form of witness statements from the following witnesses who were not called to give oral evidence:

- Ms D, Policy Development Manager at MRCP(UK), dated 31 October 2018.

11. Dr Waldschutz provided his own witness statement, dated 10 December 2019 and also gave oral evidence at the hearing. In addition, the Tribunal received evidence from the following witnesses on Dr Waldschutz’s behalf:

- Dr E, Consultant Anaesthetist and Royal College of Anaesthetists (‘RCoA’) college tutor, Ipswich Hospital, in person;
Dr G, Consultant Anaesthetist & Clinical Lead for Theatres and Anaesthetic, Ipswich Hospital, by telephone link, and;
• Dr F, Haematologist, Queen Mary University/Barts Cancer Institute and the London Clinic, by telephone link.

Expert Witness Evidence

12. The Tribunal also received evidence from an expert witness, Professor H, a Freelance Statistical Consultant, and Emeritus Professor of Operational Research at Coventry University, on behalf of Dr Waldschutz.

13. Professor H provided a written report, dated 9 December 2019, on the statistical aspects of the allegation of cheating made against Dr Waldschutz.

14. Professor H also provided supplemental reports, dated 03 January 2020 and 08 January 2020.

15. Professor H assisted the Tribunal in providing evidence about the nature of the statistical methodology used by the MRCP(UK) Anomaly Monitoring System (AMS), and in subsequent consideration of the similarities between the exam papers of the two candidates, and their application to the case of Dr Waldschutz.

Documentary Evidence

16. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included, but was not limited to:

• MRCP(UK) Part 2 written exam papers (the question booklet and answer sheet) for Dr Waldschutz and Candidate A;
• A number of testimonials on behalf of Dr Waldschutz attesting to his good character and professionalism, including from educational supervisors and senior colleagues, dated August and October 2019;
• Email from MRCP(UK) enclosing spreadsheet analysis of candidate performance in the questions for the November 2017 Part 2 Written examination, dated 26 November 2019, and;
• CV of Ms B, Head of the Research Unit at MRCP(UK).

The Tribunal’s Approach

17. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Waldschutz does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e. whether it is more likely than not that the events occurred. A fact will therefore be established by the General Medical Council if the Tribunal finds that it is more likely than not to have happened.
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18. In this case, no formal admissions have been made in respect of any of the allegations and therefore the Tribunal must consider each in turn.

19. The Tribunal noted that the doctor is to be considered as a man of previous good character. It considered that this, together with the testimonial evidence that it had received and heard, weighed to the Doctor’s credit in its consideration of the case.

The Tribunal’s Analysis of the Evidence and Findings

20. The Tribunal has considered each outstanding paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts.

Paragraph 1

21. In reaching its determination on the facts of this case, the Tribunal first considered the statistical evidence supporting the allegations made against Dr Waldschutz.

22. The Tribunal agreed with the submissions made by Mr Day that the evidence of Ms B should not be weighted as that of an expert witness. Ms B administers the AMS process for MRCP(UK) and is very experienced and knowledgeable about this process, but is not an expert statistician. The Tribunal therefore considered her evidence subject to this limitation.

23. Ms B’s key role is to process and communicate the statistical analysis and data output of the AMS system. During her evidence, Ms B demonstrated that she understands it is not impossible for a matching pair with such a correlation of correct answers to occur, and it was on this basis and with the aim of identifying further corroboration that she conducted her own analysis of the incorrect matching answers, and the sequences of matching answers (correct or incorrect) between Dr Waldschutz and Candidate A in the three papers. Her evidence was that the likelihood of two candidates sharing this number of correct answers had a ‘Heads Value’ of 13, the equivalent to a tossed coin landing on heads 13 times in a row; a probability of 0.012%. However, the Tribunal also noted from the evidence of Ms B that the AMS exercise had identified three other anomalous pairs in this paper who were not subject to further investigation – and therefore the Tribunal considered those matches must have arisen by operation of chance. It further noted the evidence from Ms B that each of those pairs would have had the same or a higher Heads Value than that of Dr Waldschutz and Candidate A.

24. It was the Tribunal’s view that Ms B was an honest witness who provided clear and specific answers when questioned about the AMS process and data. It also noted that the data she had worked with was the raw output of the AMS system and
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she had not attempted to produce new data or carry out manual adjustments, simply collating the data as she would ordinarily do within the context of such an investigation.

25. During the course of her evidence Ms B stated that she believes the AMS analysis does factor in the sequences of correct matching answers, but on interrogation of the data and the evidence of Professor H, it was determined that this is not the case.

26. The Tribunal did not consider that this inaccuracy and difficulty assimilating more in-depth analysis impacted Ms B’s credibility as a witness as she provided honest answers and conceded where there were gaps in her knowledge or the rigour of the AMS process. The Tribunal found her evidence helpful and straightforward, but noted that her reliability on statistical matters outside the scope of her role was limited. Where she expressed a view on the significance of the matching incorrect answers, or sequences of matching answers within the papers, the Tribunal considered that the weight of these were substantially diminished by the subsequent evidence from Professor H.

27. During the course of his evidence to the Tribunal, Professor H informed the Tribunal that whilst the matched correct answers of Dr Waldschutz and Candidate A were unlikely to have occurred by chance, this remained a possibility and a plausible explanation for the results. Through his analysis he was able to demonstrate that the likelihood of this was actually slightly higher than that suggested by the AMS process. He illustrated that the Heads Value attributed to the shared correct answers would be affected by the appearance of easier questions – that statistical analysis demonstrated a high proportion of candidates got right - within their number. In his view this could reduce the Heads Value to 10 or 11. He added that further data modelling he had conducted showed that the degree of shared correct answers between Dr Waldschutz and Candidate A, whilst anomalous, did not require cheating to have taken place and may have arisen as a matter of random chance.

28. The expert status of Professor H in these matters was not disputed by any party, and the Tribunal found him to be an honest, impartial and impressive witness who answered questions solely on the basis of his specialist knowledge.

29. Whilst Professor H’s initial report was unsurprisingly orientated towards the questions he had been asked to address by the defence, in his evidence before the Tribunal he answered all questions put to him and gave objective views even where these were not in support of the defence position, explaining his findings in understandable terms. The Tribunal found Professor H’s supplementary reports helpful in elaborating on the considerations of the case.

30. He opined that as no in-depth, expert analysis had been (or could be on the data available) conducted on the level of matching incorrect answers, or the
sequences of common answers, any consideration of possible likelihoods and inferences to be drawn would be purely speculation and should be treated with extreme caution. The Tribunal accepted this.

31. It was accepted by all parties that the AMS system has limitations on the data and statistical correlations it is able to provide and is in essence a somewhat blunt tool, which is used to identify potential instances of cheating. Following the system flagging a matched pair, the MRCP(UK) process is to then look for any further supporting evidence which may demonstrate or prove that cheating has occurred.

32. In light of the evidence of Ms B, Professor H and the documentary evidence before it, the Tribunal concluded that whilst the matching exam answers of Dr Waldschutz and Candidate A did appear to be statistically anomalous, this fact of itself did not constitute sufficient proof that cheating had occurred.

33. The Tribunal accepted the submission of Mr Day that whilst it is statistically unlikely that the results were a result of chance it does not necessarily follow that, on the balance of probabilities, Dr Waldschutz did copy the work of Candidate A. Rather, the Tribunal needs to consider the balance of probabilities in light of all the evidence. This approach is supported by the fact that MRCP(UK) use the AMS matching to direct investigations, where the full and specific circumstances of the case are looked at to see whether there is any material evidence of cheating.

34. Having determined that the statistically anomalous similarities between the answers submitted by Dr Waldschutz and Candidate A did not on their own constitute proof that these results could only be produced by either candidate cheating, the Tribunal went on to consider the additional evidence before it on the matter.

35. The Tribunal heard oral evidence from Ms C, in addition to receiving her written statements within the hearing bundle.

36. The account of Ms C was that during the first of the three exams Dr Waldschutz’s behaviour drew her attention, as he appeared to be very nervous. She said that he was ‘jumpy, looked around a lot, and appeared incredibly uncomfortable, as if something was bothering him. He stretched and fidgeted a lot, and jumped at small sounds, including any noises from behind. When any invigilators went near him he looked at them as if they were intruding on his personal space’.

37. She went on to say that she made a phone call to the Central Office at 12:01 as she was ‘concerned for Dr Waldschutz’s welfare’. Central Office said that they did not have any record of welfare concerns, and said to put his behaviour down to nerves.
38. In considering the evidence of Ms C, the Tribunal noted that there were some inconsistencies and inaccuracies in her evidence. Her account was that an invigilator, Mr I, was instructed by her to advise Dr Waldschutz that his behaviour could be considered suspicious, and to keep his focus on his paper.

39. Ms C stated that she was aware that this discussion took place, although at the time she was positioned at another part of the exam hall, addressing some noise issues coming from an adjacent kitchen. Mr I did not recall speaking to Dr Waldschutz when the GMC contacted him as part of its investigation.

40. Furthermore, contemporaneous documents created by Ms C, the Chief Invigilator for the exam make no reference to this, although it does log her concerns about Dr Waldschutz’s behaviour and her call to Central Office to check if there were any welfare issues with Dr Waldschutz that she should be aware of.

41. The Tribunal was of the view that Ms C was an experienced, diligent and conscientious invigilator who took her role and the welfare of exam participants very seriously. As such, it regarded it as unlikely that had such a verbal warning taken place it would not have been logged. Moreover, Mr I commented to the GMC that usually if there was an issue during an exam he would be asked by the Lead Invigilator to provide a statement and he confirmed that he has not provided any. Therefore, the Tribunal could not be satisfied that this event transpired as described by Ms C.

42. The Tribunal was of the opinion that Ms C was being honest when recounting events, and did not seek to embellish the truth, but noted the inconsistencies between her earlier and later accounts. The Tribunal considered that Ms C’s interpretation of events appeared to have evolved over time, with her contemporaneous reports illustrating a candidate acting nervously and appearing uncomfortable, leading to welfare concerns on the part of Ms C. In her later accounts her description of Dr Waldschutz’s behaviour was much more suspicious in nature and appeared to implicitly attribute his actions on that day to dishonest behaviour.

43. Ms C’s description of her subsequent encounter with Dr Waldschutz at the MRCP(UK) hearing into these matters also appeared to develop, with Ms C describing the events in more detail and with a somewhat emotive context. Her oral evidence was that she felt Dr Waldschutz was trying to intimidate her and that she resisted this, feeling that others may have ‘crumbled under the pressure’. While Ms C accepted that this was just her opinion, and did not seek to prove that this was true or embellish the account deliberately, it did nonetheless demonstrate that there was a subjective interpretation of events taking place on her part, likely to have been coloured by an assumption of guilt on her part in respect of Dr Waldschutz.
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44. When discussing the second exam, and an instance when Dr Waldschutz was spoken to by her for talking to his study partner prior to the exam commencing, Ms C insisted that exam conditions are in place once candidates enter the exam hall. However the guidelines for MRCP(UK) suggest that this is not the case. Whilst a minor discrepancy, this was a further example of evidence given by Ms C being slightly skewed against the Doctor. The Tribunal also noted that this incident was recorded in the invigilators contemporaneous notes.

45. The Tribunal was of the opinion that Ms C’s earlier accounts and that the contemporaneous notes from the exams were reliable, but that her analysis of events appears to have developed following the identification of the matching pairs of Dr Waldschutz and the adjacent Candidate A. In this context, through no deliberate intention to mislead, Ms C appears to have sought to correlate these behaviours to suspicious activity on the presumption that cheating had occurred. It therefore attached significantly less weight to the evidence of this nature.

46. By way of further example, the Tribunal did not accept the suggestion by Ms C that Dr Waldschutz’s relative height made it easier for him to copy from Candidate A without being noticed, and observed that this theory appears to have arisen once Ms C became aware of who the matching pair were in an attempt to explain the apparent cheating.

47. It was clear from the documentary evidence and accounts of Ms C that Dr Waldschutz was under significant scrutiny from an early stage of the first exam, due to being subject to increased patrolling because of Ms C’s concerns about his welfare regarding his nervousness. He was also sitting right at the front of the exam hall directly in front of an Invigilator’s desk. Despite this, there were no observations or allegations that he had been seen looking at or copying from Candidate A’s paper, and the Tribunal considered it highly improbable that he would have been able to copy another candidate’s paper without being noticed while under such close observation.

48. The Tribunal also considered that for Dr Waldschutz to have cheated would have been logistically difficult even without the supervision he was under. The answer papers are double-sided and so Dr Waldschutz would have had to time his answers and complete his own answer sheet in synchronisation with Candidate A, whilst making his own notes and answering those questions he completed himself which did not match Candidate A.

49. The submissions of Mr Rankin that this exam was a ‘make or break’ opportunity for Dr Waldschutz and his life in the UK did not carry significant weight, as it was explained to the Tribunal that there were multiple routes available for Dr Waldschutz to progress. His subsequent career continuing in the UK since the exam demonstrates the truth of this. The testimonials in support of Dr Waldschutz and his own evidence was that he was taking the exam, which was his last chance to do so.
having failed it several times previously, in order to get closure on that route whether successful or not.

50. The Tribunal also noted the evidence from Dr Waldschutz that candidates are allowed to withdraw from the exam up until the last minute, and so if Dr Waldschutz felt unprepared he could have deferred his participation in the exam until a later time.

51. Accordingly, the Tribunal was not of the opinion that the evidence of Ms C or that of the other invigilators described anything that corroborated the accusation of cheating. Rather, it concluded that given Dr Waldschutz was being observed the entire time and there were no observations of cheating or looking at Candidate A’s paper, it supported the contention of Dr Waldschutz that he had not cheated.

52. Additionally, the Tribunal heard from Ms C that the candidates seating positions would have only been known to them on the day of the exam. The Tribunal considered that for Dr Waldschutz to have copied from a stranger, whose competence and academic abilities were unknown to him, would have been a particularly risky strategy. Having seen and heard his evidence, the Tribunal did not consider Dr Waldschutz to be of a reckless or risk-taking temperament, and so for him to act in this way would be inconsistent with the Tribunal’s assessment of him.

53. When considering the evidence of Dr Waldschutz, the Tribunal was of the opinion that he gave truthful and concise answers, accepting where he did not know or remember something, or was uncertain. He did not seek to blame Candidate A and gave a frank explanation of how nervous he was, and how sitting for long periods causes him discomfort. He appeared candid and forthcoming in this regard, while explaining events in straightforward and rational terms.

54. The Tribunal did not accept the submission of Mr Rankin that Mr Waldschutz’s earlier statement that he ‘did not recall’ being spoken to about suspicious behaviour changed over time, with his later and oral accounts categorically denying that this interaction occurred. Instead, it accepted the evidence of Dr Waldschutz that this wording had been prepared by Dr Waldschutz’s legal team in response to the MRCP(UK) investigation, and that his overall position on this had not been inconsistent.

55. The Tribunal noted that when questioned about timekeeping Dr Waldschutz did not try to claim he had been looking around at the clocks in order to explain away his behaviour, but confirmed that as far as he could remember he had only used the clock at the front of the room and so this was not the cause of his behaviour. The Tribunal considered that this was an honest response and the fact that he did not use this as an opportunity to justify his behaviour at the time gave weight to his credibility as a witness.
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56. The Tribunal was not of the view that Dr Waldschutz had positively sought to assert that Candidate A had copied from him, as submitted by Mr Rankin. In his statements he mentioned that this was a possibility, as logistically it is, but he did not seek to pursue this further or imply this had happened in his evidence before the Tribunal.

57. No evidence or information in relation to Candidate A, save for their exam question and answer sheets and their proximity to Dr Waldschutz, were put before the Tribunal. Given this fact, and the fact that the Allegation specifically relates to Dr Waldschutz only, the Tribunal excluded consideration of whether Candidate A copied from Dr Waldschutz from their determination on the facts, although it did note that it remained a possible explanation for events.

58. In his evidence to the Tribunal, Dr E described a pattern of behaviour which supported the account of Dr Waldschutz demonstrating a high level of nervousness or anxiety in formal assessment scenarios, describing an occasion when he had observed such nervousness himself during an Initial Assessment of Competency in October 2019. He said that the level of nervousness Dr Waldschutz displayed was out of character, and at odds with how the Doctor usually acted in a clinical setting. The impression Dr E gave was that Dr Waldschutz is a competent and relatively confident practitioner generally, even when being informally assessed. Under formal assessment conditions, however, he can become noticeably agitated and appear distracted, in a similar fashion to that described by Ms C in her earlier statement.

59. The Tribunal considered Dr E an honest and credible witness and was very impressed by his professional standards and his commitment to his tutorial and pastoral duties, demonstrating a high level of emotional intelligence and sensitivity. A similar level of support and mentorship was demonstrated by Dr G.

60. In her evidence to the Tribunal, Dr G described Dr Waldschutz’s response to the proceedings against him, the impact it has had on him, and provided a positive testimonial in regards his character and professionalism. She highlighted his modest temperament as a new anaesthetics trainee, despite his experience and relative seniority in other fields of medicine.

61. Dr G even went as far to state that she believes Dr Waldschutz and has done so since he first came to her about the issue. Whilst the Tribunal attributed no weight to her opinion in determining the facts of the case, it did acknowledge that this demonstrated the level of credibility and respect in which Dr Waldschutz is held by his colleagues. Both senior colleagues describe Dr Waldschutz coming to them with this issue early on in his rotation, which they were both impressed by.

62. In his submissions, Mr Rankin drew the Tribunal’s attention to the question sheet of Dr Waldschutz, highlighting questions where no notes were made but...
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answers submitted nonetheless, particularly where these correlated to the matching responses of Dr Waldschutz and Candidate A.

63. On reviewing Dr Waldschutz’s question papers and the notes and annotations, the Tribunal concluded that these do reflect a candidate completing an exam in the manner and strategy outlined by Dr Waldschutz. This documentary evidence was consistent with someone working through and eliminating answers on the question sheet and then copying these to the answer paper, going back over unanswered questions as time allowed.

64. The Tribunal noted that Mr Rankin did not advance a similar analysis of Candidate A’s question paper, and when the Tribunal did so and compared it to Dr Waldschutz’s it noted that there were areas of similarity and differences, and this is consistent with what one might expect to see from two average candidates taking a difficult exam. It did not consider there to be any significant conclusions that could be taken from the exercise.

65. As there was no direct evidence that Dr Waldschutz did in fact copy the answers of Candidate A, this left only the statistical evidence and their respective seating positions to support this contention. The Tribunal determined that this needed to be treated with considerable caution, particularly given the other three anomalous pairs within the same paper, the observations of Professor H about the limitations of the AMS findings, and the absence of wider expert statistical analysis of the matching incorrect answers and sequences of matching answers across both papers. The Tribunal therefore concluded that the GMC had failed to establish on the balance of probabilities Dr Waldschutz did copy Candidate A or cheat in these exams.

66. The Tribunal found paragraph 1 of the Allegation not proved.

Paragraph 2

67. Given the Tribunal’s determination regards paragraph 1 of the Allegation, it therefore found that paragraph 2 is also not proved.

Paragraph 3

68. Given the Tribunal’s determination regards paragraphs 1 and 2 of the Allegation, it therefore found that paragraph 2 is also not proved.

The Tribunal’s Overall Determination on the Facts

69. The Tribunal has determined the facts as follows:

That being registered under the Medical Act 1983 (as amended):
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1. On 28 and 29 November 2017, whilst participating in the MRCP(UK) Part 2 Written Examination you:
   a. read the work of another candidate;
      Not proved
   b. copied the work of another candidate.
      Not proved

2. You knew that the answers provided in your exam papers were:
   a. not your own;
      Not proved
   b. those of another candidate.
      Not proved

3. Your actions as described at paragraph 1 were dishonest by reason of paragraph 2.

      Not proved

70. As the Facts have not been found proved it therefore follows that Dr Waldschutz’s fitness to practise is not impaired.

Confirmed
Date 09 January 2020

Mr Piers Doggart, Chair
Application for documents to be excluded from the GMC Bundle

1. At the outset of this hearing Mr Day, Counsel, on behalf of Dr Waldschutz, applied to exclude certain documentary evidence from the proposed GMC document bundle, under Rule 34(1) of the General Medical Council ('GMC') (Fitness to Practise) Rules 2004, as amended (the Rules).

Submissions on behalf of Dr Waldschutz

2. Mr Day, Counsel, on behalf of Dr Waldschutz, submitted that within the proposed unredacted GMC bundle there is information which is potentially prejudicial to Dr Waldschutz, namely parts of the witness statement and the exhibit of Ms B which contains details of analysis she had undertaken.

3. Mr Day submitted that reliance on any statistical evidence other than the identical correct answers, as captured by the MRCP(UK) anomaly detecting software, without supporting statistical opinion from an expert should be deemed inadmissible. The exhibit in question is a collated table and analysis of incorrect matched answers produced by Ms B, and the significance or otherwise of these is clearly a matter of statistical interpretation and requires expert validation, which has not been provided by the GMC.

4. Mr Day submitted that it has not been proven or even asserted that Ms B has any relevant expertise in the production and analysis of such statistical data, and therefore the GMC can not claim that her testimony on this matter is of relevance or will assist the Tribunal. Rather, the data tables and interpretation of Ms B are effectively hearsay and could lead to incorrect inferences and conclusions.

5. Without such expert evidence available to the Tribunal, Mr Day submitted, the entire material should be redacted in the interests of fairness and relevance as it could only invite speculation.

Submissions on behalf of the GMC

6. Mr Rankin, Counsel, on behalf of the GMC, submitted that these documents may provide the Tribunal with important background and context when making its decisions.

7. Mr Rankin submitted that it is already agreed that the raw exam result data will be put before the Tribunal, and therefore Ms B’s collation of matching incorrect answers will not be introducing any new information.
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8. Mr Rankin went on to submit that this challenge to the validity of Ms B’s analysis and the corresponding data was not raised in sufficient time to ascertain the relevant credentials of Ms B in these matters. An up to date curriculum vitae can be produced for Ms B during the course of proceedings and the Tribunal can then use its judgement to attribute appropriate weight to this evidence as it considers proper.

9. Mr Rankin submitted that the GMC had acknowledged that certain documents were not relevant and agreed redactions have been made where appropriate. Mr Rankin stated that the remaining documentation was relevant and could be of assistance to the Tribunal in reaching its decision regarding matters of fact.

10. In summary, Mr Rankin submitted that excluding potentially useful evidence at this stage, prior to the Tribunal having the opportunity to assess its relevance, would not be in the interests of fairness. The Tribunal should therefore consider all the relevant information available and reach its own conclusions on the applicability and weight of said evidence.

Tribunal Decision

11. The Tribunal took account of the requirements of Rule 34(1): that evidence adduced before a Tribunal must be both fair and relevant.

12. Rule 34(1) states:

"The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law."

13. The Tribunal accepted the advice of the Legally Qualified Chair, who reminded it that it is for the Tribunal to make a decision on what information is fair and relevant when making its determination and it must use professional judgement in reaching its decision.

14. The Tribunal first considered whether it was fair to admit the documentation and bore in mind the submissions of both parties and the two areas of focus, namely a table of all common answers including where these were incorrect, and comments on those by Ms B.

15. The Tribunal determined that a table setting out this information clearly provided further context and understanding of the circumstances which led to the Allegation, and could be of great assistance in reaching its decision on facts. The Tribunal also noted that the raw material contained in the table had already been substantially provided to the Tribunal in the form of the candidate’s answer papers. Those were plainly relevant to its deliberations. It did not consider this resulted in prejudice to Dr Waldschutz.
16. The Tribunal noted that the GMC had already made concessions and agreed necessary redactions with Dr Waldschutz. The Tribunal acknowledged that the GMC believe that all remaining documentation is relevant to provide context and background evidence to the Allegation, and concluded that from the information available this evidence appears to be relevant to the matters before the Tribunal and should be admitted.

17. Mr Rankin was not currently able to advise as to the relevant expertise of Ms B and stated that these matters have only now been raised by the defence, but the Tribunal disregarded the timing factor when reaching its decision and considered the application on its merits. It considered that the evidence, credibility, and experience of Ms B as a witness can be assessed during the course of the hearing and concerns can be dealt with at that stage.

18. The Tribunal was mindful of the risk of prejudice but is able to exercise its judgement in determining what weight to place on evidence adduced so as to avoid any unfairness. It is not unusual for a Tribunal to have to address such matters of evidence and opinion as hearings proceed, attributing the appropriate weight to be attached. The Tribunal noted that parts of the evidence of Ms B may need to be disregarded and will address these concerns as and when they arise, but at this stage the Tribunal feels that the disputed parts of her statement are relevant and can be fairly admitted with that caveat.

19. Accordingly, the Tribunal has determined to refuse Dr Waldschutz’s application under Rule 34(1) in respect of the proposed, unagreed redactions to documents and instead determined to admit the GMC bundle with the previously agreed redactions.