IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASON DEAN BIGELOW, RPH,
Appellant,
vs.
NEVADA STATE BOARD OF PHARMACY,
Respondent.

No. 89609-COA

FILED

DEC 18 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jason Dean Bigelow, RPH appeals from a district court order denying a petition for judicial review of a Nevada State Board of Pharmacy decision to impose discipline upon him. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

In 2020, Bigelow was working for Save Mart pharmacy as a pharmacy manager when the Save Mart loss prevention team discovered the loss of thousands of pills—controlled substances with a street value of over $50,000. Ultimately, Save Mart terminated Bigelow's employment for his failure to timely reconcile the controlled-substance counts and his disregard of legally mandated state and federal reporting requirements related to the loss of those controlled substances. Bigelow later was hired by Costco pharmacy without disclosing the reason for his termination from Save Mart.

Two years later, Bigelow was working a shift at the Costco pharmacy when a technician gave him a prescription for oxycodone to count. Bigelow advised the technician that the vial was short six pills, so the technician added six pills to Bigelow's prescription vial from the stock bottle. Bigelow recounted the prescription vial, which now contained the

correct number of pills; however, he then alerted the technician that the stock bottle was missing six pills. Bigelow and the technician then began to look for the missing pills, and the rest of the pharmacy team present also joined in the search. At some point, Bigelow paused his search efforts to take lunch, putting his smock on the counter before leaving.

While Bigelow was at lunch, the managing pharmacist returned from a meeting and another pharmacist told her about the six missing pills. At that point, the managing pharmacist joined the team's search efforts. Eventually, Bigelow returned from lunch and retrieved his smock, which no one had touched while he was gone. At some point, the managing pharmacist asked everyone to check their smock pockets. Bigelow did so, finding all six pills in his breast smock pocket. Around this time, the managing pharmacist alerted Costco's loss prevention team of the incident, and they began an investigation.

The next day, Bigelow wrote a statement for Costco recounting the incident. In that statement, Bigelow indicated that, when he went to count the prescription vial, he might have spilled the pills or lost his balance. Costco's managing pharmacist subsequently informed the respondent Nevada State Board of Pharmacy about the incident, and the Board opened a disciplinary case against Bigelow. Costco terminated Bigelow's employment one day later.

As a result of the incident, the Board sought to discipline Bigelow, accusing him of: (1) violating 21 U.S.C. § 843(a)(3) and/or 21 U.S.C. § 846 by diverting and/or attempting to divert or acquire or obtain possession of controlled substances; (2) violating NRS 453.331(1)(d) and/or NRS 453.391(1) by diverting and/or attempting to divert or acquire or obtain possession of controlled substances; (3) engaging in unprofessional conduct

and conduct contrary to the public interest as defined in NAC 639.945(1)(g) by diverting and/or attempting to divert or acquire or obtain possession of controlled substances which are legally sold in pharmacies; and (4) engaging in unprofessional conduct and conduct contrary to the public interest pursuant to NAC 639.945(l)(h) by being a party to a fraudulent or deceitful practice or transaction by diverting and/or attempting to divert or acquire or obtain possession of controlled substances. *See* NRS 639.210(4), (11), (12) (permitting the Board to suspend or revoke any certificate, license, registration, or permit in certain circumstances); NRS 639.255(3) (authorizing the Board to establish a schedule of fines that may be imposed to discipline the holder of any certificate, license, or permit issued by the Board). In his answer, Bigelow denied each count, stating for each count that he "never intended to divert any controlled substances and the tablets somehow got put into his smock pocket by mistake."

The Board held a hearing on the matter where the Board prosecutor and Bigelow stipulated to the admission of several exhibits, including video footage of the incident from Costco's surveillance cameras, Bigelow's Costco statement, a written statement by a pharmacist who worked with Bigelow at both Save Mart and Costco discussing how he and Bigelow have had issues with perpetual inventory in the past, several letters attesting to Bigelow's good character, and Bigelow's smock. The Board admitted all of the stipulated exhibits.

However, Bigelow moved to exclude the anticipated testimony of a Save Mart loss prevention employee related to her investigation into the missing controlled substances from Save Mart's inventory and Bigelow's subsequent termination from Save Mart. He also moved to exclude two of the Board prosecutor's proposed exhibits, which detailed the results of the

Save Mart investigation and documented Bigelow's termination from Save Mart. Bigelow asserted that the Save Mart evidence was irrelevant, that it was improper propensity and bad character evidence, and that any probative value was substantially outweighed by the danger of unfair prejudice and confusion of the issues. The Board prosecutor opposed his request, arguing that the evidence should be admitted because the materials were relevant to rebut Bigelow's character reference letters. Bigelow then moved to withdraw the letters, asserting they were only intended to be rebuttal evidence in case the Save Mart evidence was admitted. The Board denied both of Bigelow's motions.

Each party then called witnesses. Of relevance, the Board prosecutor called Costco's managing pharmacist who testified that, during his interview for the job at Costco, Bigelow did not tell her he had been terminated from Save Mart. In addition, she testified that, on the day the six oxycodone pills went missing, Bigelow went to lunch without telling her that the pills were missing. She also testified that she experimented with trying to spill pills into her breast smock pocket to recreate the incident but was unable to do so because most of her pills fell on the floor.

The Board prosecutor also called the Save Mart loss prevention employee who testified about Save Mart's termination of Bigelow's employment. During her testimony, the Board prosecutor introduced the exhibits detailing Save Mart's inventory investigation and Bigelow's termination. Bigelow objected to the admission of those exhibits and asserted a standing objection to their use during questioning. As before, he argued that the exhibits were irrelevant and improper character evidence. The Board prosecutor disagreed. The Board overruled Bigelow's objection, stating, without explanation, that the evidence was relevant.

Bigelow subsequently testified in his own defense, asserting that he did not intentionally put the pills in his pocket nor could he recreate spilling the pills in his pocket. He also clarified that, while his written statement indicated that he might have lost his balance or spilled the pills, he wrote that before he was able to watch the video, which instead showed him fidgeting with his glasses around the time the pills went missing. He further asserted that he did not tell his managing pharmacist about the missing pills before going to lunch because she was not in the pharmacy when he realized the pills were missing and that she had not returned by the time he needed to go to lunch. He added that he had recently gotten in trouble for missing lunch. Then, while recounting the events leading to him finding the pills in his breast pocket, he said that he had to use one hand to open the pocket and the other to retrieve the pills because they were "really jammed down in there."

Following each witness's direct and cross examinations, the Board asked the witnesses follow-up questions, which revealed that Costco's pharmacy employees kept track of their perpetual inventory by writing how many pills were in any particular bottle on a sticker and attaching that sticker to the bottle, rather than by writing the number of pills that were expected to be in the bottle based on Costco's inventory.

Both parties then presented their closing arguments. The Board prosecutor argued that "it's clear that Mr. Bigelow intended to divert six oxycodone" because "an accidental spill defies logic, and it also defies physics." He reminded the Board that Bigelow lied by omission about his termination from Save Mart during his interview with Costco. And he added that it was hard to believe the pills accidentally ended up in Bigelow's

pocket when he was "no stranger to loss," as evidenced by the fact that thousands of pills went missing while he was working at Save Mart.

Conversely, Bigelow's attorney argued that this was "a simple mistake." He added that it did not make sense for someone who was trying to steal to alert everybody that the pills were missing and that there was no evidence of any motive for Bigelow to take the pills.

In his rebuttal, the Board prosecutor stated that this incident was not an accident, it was "a subterfuge by an individual who's been around discrepancies of substantial losses in pharmacies before, knew the system, had managerial experience, and attempted to take advantage of the system and divert some of the most addictive substances that are available to the public." And he emphasized that the Save Mart evidence was not being used to "paint Mr. Bigelow in a bad light, but to give the board a flavor" because the Board needed "to know who [it was] licensing."

After both parties' closing arguments, the Board began its deliberations, which were done in public and on the record. The deliberations addressed two possible outcomes: (1) that Bigelow was guilty because it was illogical and against common sense to believe that all six of the pills accidentally fell upwards into Bigelow's breast pocket without any falling on the floor, so Bigelow must have intentionally diverted them and (2) that Bigelow was not guilty because, even though no one could explain how the pills ended up in Bigelow's pocket, it did not make sense to assume that he intentionally diverted the pills when he was the one to alert the team that they were missing and when he left his smock with the pills inside on the counter for anyone to find.

Ultimately, four of the seven board members voted to find Bigelow guilty of all four counts. Thereafter, the Board issued an order

memorializing its guilty finding and revoking Bigelow's certificate of registration—although it immediately stayed the revocation for a two-year probationary period. The Board also ordered Bigelow to pay a $5,000 fine, attorney fees, and costs. Bigelow subsequently petitioned the district court for judicial review, which it denied, and this appeal followed.

On appeal, Bigelow argues that the Board erred or abused its discretion by admitting the Save Mart evidence and that the error prejudiced his substantial rights because the Save Mart evidence was used to suggest he had a propensity to divert medication and therefore diverted the oxycodone from Costco. For the reasons set forth below, we disagree with Bigelow's arguments and affirm the denial of judicial review.

"This court applies the same standards as the district court in resolving a petition for judicial review of an administrative agency's decision in a contested case." *Redevelopment Agency of Sparks v. Nev. Lab. Comm'r*, 140 Nev., Adv. Op. 44, 551 P.3d 303, 308 (2024). In reviewing the agency's final decision, "[t]he court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact." NRS 233B.135(3). "The agency's factual findings are reviewed deferentially 'for clear error or an abuse of discretion' and will not be overturned if 'supported by substantial evidence.'" *Redevelopment Agency*, 140 Nev., Adv. Op. 44, 551 P.3d at 308 (quoting *Dep't of Bus. & Indus. v. TitleMax of Nev., Inc.*, 135 Nev. 336, 340, 449 P.3d 835, 839 (2019)); *see* NRS 233B.135(3)(e)-(f). "Substantial evidence exists if a reasonable person could find the evidence adequate to support the agency's conclusion." *Law Offs. of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 362, 184 P.3d 378, 384 (2008). However, questions of law are reviewed de novo. *Redevelopment Agency*, 140 Nev., Adv. Op. 44, 551 P.3d at 308.

Bigelow does not show that the Board abused its discretion by admitting the Save Mart evidence

Chapter 622A sets forth the administrative procedure for hearings on contested cases before the Board. *See* NRS 622A.120; NRS 622A.300-.410. In any such hearing under Chapter 622A, "the regulatory body or hearing panel or officer is not bound by strict rules of procedure or rules of evidence when conducting [a] hearing, except that evidence must be taken and considered in the hearing pursuant to NRS 233B.123." NRS 622A.370(2). NRS 233B.123(1) provides that "[i]rrelevant, immaterial or unduly repetitious evidence must be excluded," otherwise "[e]vidence may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs."

Although the rules of evidence are not controlling in administrative hearings on contested cases before the Board, NRS 622A.370(2), the Nevada Supreme Court has nonetheless recognized that these rules may be applied in administrative proceedings—albeit in a more flexible manner than is required in Nevada's courts, *see State, Dep't of Motor Vehicles v. Kiffe*, 101 Nev. 729, 732-33, 709 P.2d 1017, 1019-20 (1985) (relying on both NRS 51.075(1), an exception to the rule against hearsay, and NRS 233B.123(1)); *see also Day v. Washoe Cnty. Sch. Dist.*, 121 Nev. 387, 390 n.7, 116 P.3d 68, 70 n.7 (2005) (questioning whether a medical opinion was admissible under NRS 233B.123(1) and citing NRS 50.275, the rule of evidence providing for expert testimony).

In *Kiffe*, the appellant argued that a hearing officer for the Department of Motor Vehicles improperly considered hearsay evidence during an administrative hearing to review the revocation of his driver's license. 101 Nev. at 732, 709 P.2d at 1019. On appeal, Kiffe argued that,

under NRS 233B.123(1), a police officer's testimony that he had been driving his vehicle prior to his arrest was "precluded" from consideration at the administrative hearing under Nevada's hearsay rule, NRS 51.065, because the officer obtained that information from another officer at the scene. *Id.* at 732, 709 P.2d at 1019. However, the supreme court disagreed, concluding that the officer's testimony satisfied the general exception to the hearsay rule, NRS 51.075. *Id.* at 732-33, 709 P.2d at 1019-20 (determining that "[t]he "circumstances under which [the police officer's] statements were made [to another officer on the scene] offer[ed] assurances of accuracy not likely to be enhanced by calling him as a witness"). As a result, the supreme court concluded that the testimony was not precluded by statute and was admissible under NRS 233B.123(1) because it was "of the type commonly relied upon by reasonable and prudent persons in the conduct of their affairs." *Id.* at 733, 709 P.2d at 1020.

Bigelow makes a similar argument in this case, based on a different rule of evidence. He contends that the Save Mart evidence was inadmissible under NRS 233B.123(1) because it was propensity evidence and therefore precluded by NRS 48.045(2). As a general rule, NRS 48.045(2) states that "[e]vidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith." However, the statute further provides that such evidence *may* "be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." NRS 48.045(2). And in challenging the admission of the Save Mart evidence, Bigelow fails to account for NRS

48.045(2)'s express allowance for other-act[1] evidence to be used to show an absence of mistake or accident.

The "absence of mistake or accident" exception within NRS 48.045(2) allows for the admission of other-act evidence that is relevant to establishing an individual's intent—for instance, when the individual "concedes performing the act but claims to have done so mistakenly or with innocent intent" or when the individual "concedes harm or loss but argues it resulted from an accident and not of his agency." *Hubbard v. State*, 134 Nev. 450, 457-58, 422 P.3d 1260, 1266 (2018). As the supreme court noted in *Hubbard*, the "absence of mistake or accident" exception is "grounded in the law of probabilities." *Id.* at 458, 422 P.3d at 1267. "Innocent persons sometimes accidentally become enmeshed in suspicious circumstances, but it is objectively unlikely that will happen over and over again by random chance." *Id.* (quoting Edward J. Imwinkelried, *An Evidentiary Paradox: Defending the Character Evidence Prohibition by Upholding a Non-Character Theory of Logical Relevance, the Doctrine of Chances*, 40 U. Rich. L. Rev. 419, 423 (2006)).

Here, while Bigelow asserts that the Save Mart evidence "had no relevance to the charges against" him, this argument ignores that this evidence directly countered Bigelow's primary defense—that the pills wound up in his smock pocket by mistake. Throughout the administrative proceedings, Bigelow repeatedly raised the defense of mistake to argue that he lacked the requisite intent to commit any of the four alleged violations. Specifically, his answer to each of the alleged violations stated that the pills

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[1]Other-act evidence is sometimes referred to as "prior bad act evidence." *See, e.g., Hubbard v. State*, 134 Nev. 450, 454, 422 P.3d 1260, 1264 (2018).

"somehow got put into his smock pocket by mistake," his testimony characterized the incident as unintentional, and his attorney characterized the incident as a mistake during opening and closing statements. The record further demonstrates that, in his closing argument, the Board prosecutor utilized the Save Mart evidence to rebut Bigelow's accident or mistake defense by, among other things, asserting that Bigelow was "no stranger to loss," as evidenced by the fact that thousands of pills went missing while he was working at Save Mart.[2]

We recognize that, in opposing Bigelow's motion to exclude the Save Mart evidence, the Board prosecutor argued that the evidence was relevant to rebut Bigelow's evidence of his good character. But the fact that the Board prosecutor did not initially identify the "absence of mistake or accident" exception at that time does not render the admission of the Save Mart evidence an abuse of discretion. Bigelow had already asserted the mistake or accident defense in his answer, he testified that he did not intentionally put the pills in his pocket, and the Board prosecutor ultimately utilized the Save Mart evidence to rebut Bigelow's mistake or accident defense in his closing argument. *Cf. Hubbard*, 134 Nev. at 457-58, 422 P.3d at 1266-67 (noting that evidence of a defendant's prior burglary in a trial for a new burglary would have been relevant to proving he entered the home with felonious intent; however, the defendant did not argue that he lacked felonious intent (i.e., that he entered the home by mistake), but instead claimed he was not present at the scene of the crime, such that the

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[2]On appeal, Bigelow fails to acknowledge or address the Board prosecutor's use of the Save Mart evidence for this purpose and thus he has forfeited any arguments on that point. *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3, (2011) (providing that issues not raised on appeal are deemed waived).

probative value of the evidence was substantially outweighed by unfair prejudice). Where Bigelow's defense was premised on a theory of mistake, the probative value of the Save Mart evidence was not substantially outweighed by unfair prejudice. Therefore, Bigelow has not shown that the evidence was "precluded" by NRS 48.045(2) such that it was inadmissible under NRS 233B.123(1).

As noted above, in administrative hearings on contested cases like this one, the Board was not bound by formal rules of procedure and evidence. *See Kiffe*, 101 Nev. at 732-33, 709 P.2d at 1019-20; *see also Minton v. Bd. of Med. Exam'rs*, 110 Nev. 1060, 1086-87, 881 P.2d 1339, 1357 (1994), *disapproved of on other grounds by Nassiri v. Chiropractic Physicians' Bd.*, 130 Nev. 245, 251, 327 P.3d 487, 491 (2014) (noting, based on the relaxed procedures inherent in administrative matters, that the admission of testimony that would have been error in a criminal trial was not necessarily error in an administrative case). Moreover, the case was proceeding before a board of experts who not only were less likely to be improperly influenced by evidence than a jury, but who could use their expertise to independently identify whether the evidence was relevant to rebut Bigelow's defense. *See Minton*, 110 Nev. at 1086-87, 881 P.2d at 1357; 2 Charles H. Koch, Jr. & Richard Murphey, *Administrative Law and Practice* § 5:52 (3d ed., 2025 update).

In sum, based on the nature of Bigelow's defense, the Save Mart evidence was not precluded by NRS 48.045(2) because it was relevant and used to show "absence of mistake or accident" such that its probative value was not substantially outweighed by unfair prejudice and, under the circumstances of this case, it was of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs. Thus, in

accordance with *Kiffe*, the Board did not abuse its discretion by admitting the evidence under NRS 233B.123(1).[3]

Bigelow does not establish that the admission of the Save Mart evidence prejudiced his substantial rights

Although we conclude that the Board did not abuse its discretion by admitting the Save Mart evidence, because Bigelow contends that his substantial rights were prejudiced by the admission of this

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[3]Citing *Minton*, Bigelow also argues that due process considerations required the Board to exclude the Save Mart evidence. But Bigelow fails to address *Minton*'s three-factor test for determining whether "a given procedure appropriately safeguards an individual's due process guarantees." *Minton*, 110 Nev. at 1082, 881 P.2d at 1354. Absent any cogent argument on this point, we decline to address it further. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (stating that the appellate courts need not consider assertions that are not supported by cogent argument). We also note that Bigelow did not ask the Board to conduct a *Petrocelli* hearing or address the three *Tinch* factors below, so any argument on those points are forfeited. *See State ex rel. State Bd. of Equalization v. Barta*, 124 Nev. 612, 621, 188 P.3d 1092, 1098 (2008) (extending the forfeiture rule to judicial review of administrative decisions and holding that any arguments not made before an administrative agency are forfeited); *see also Tinch v. State*, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997) (enumerating three factors a court must consider before admitting other-act evidence), *holding modified by Bigpond v. State*, 128 Nev. 108, 116-17, 270 P.3d 1244, 1249-50 (2012); *Petrocelli v. State*, 101 Nev. 46, 51, 692 P.2d 503, 507 (1985) (explaining the procedure for admitting other-act evidence), *superseded in part by statute*, NRS 213.085, *as recognized in Thomas v. State*, 120 Nev. 37, 44-45, 83 P.3d 818, 823 (2004). Finally, Bigelow fails to expressly argue on appeal that the Board erred by either failing to conduct a *Petrocelli* hearing, or by failing to address the three *Tinch* factors, so any such arguments are also forfeited. *See Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3 (providing that arguments not raised on appeal are deemed waived).

evidence, we also address his prejudice arguments and whether they alternatively demonstrate any error in the evidence's admission.

A court "may remand or affirm the final decision of an agency or set it aside in whole or in part if substantial rights of the petitioner have been *prejudiced*" because, among other things, the final decision violates constitutional or statutory provisions, is affected by unlawful procedure or legal errors, or is an abuse of discretion. NRS 233B.135(3) (emphasis added). Although NRS 233B.135(3) does not define prejudicial error; under harmless-error review, a prejudicial error is one that "affects [a] party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached." *Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010). "The inquiry is fact-dependent and requires us to evaluate the error in light of the entire record." *Id.*

Bigelow argues that he need not demonstrate actual prejudice to succeed on appeal. Instead, he asserts that prejudice can be presumed because of the inflammatory and improper nature of the Save Mart evidence. But Bigelow's assertion that prejudice can be presumed when other-act evidence is admitted runs contrary to well established caselaw. As our supreme court has recognized, "any error in admitting . . . evidence under NRS 48.045(2) is subject to harmless error review," *Hubbard*, 134 Nev. at 459, 422 P.3d at 1267, and under harmless-error review, prejudice "is not presumed" but "must be established," *Cook v. Sunrise Hosp. & Med. Ctr., LLC*, 124 Nev. 997, 1006, 194 P.3d 1214, 1219 (2008).

While Bigelow attempts to rely on *Rives v. Farris*, 138 Nev. 138, 506 P.3d 1064 (2022), to suggest prejudice can be presumed, that argument also fails. *Rives* involved a medical malpractice suit where the district court admitted evidence of a prior malpractice case against the same defendant

doctor and the plaintiffs referenced that other case over 180 times during trial to suggest "that [the doctor] had a propensity to commit malpractice." *Id.* at 140, 506 P.3d at 1067. In reviewing the decision, the supreme court held that "the evidence had no probative value, drew the jury's attention to a collateral matter, and likely led to the jury drawing improper conclusions about [the doctor's] propensity to commit malpractice, unfairly prejudicing him." *Id.* at 147, 506 P.3d at 1072. As a result, the court reversed the jury verdict in plaintiffs' favor and remanded for a new trial. *Id.* at 148, 506 P.3d at 1072-73.

Nothing in *Rives* even remotely suggests that prejudice can be presumed based on the improper admission of propensity evidence. While the supreme court recognized the probable result of plaintiffs utilizing this evidence, that it "*likely* led to the jury drawing improper conclusions," the court was simply making a conclusion based on the circumstances reflected in the record before it. *Id.* at 147, 506 P.3d at 1072 (emphasis added). Further, *Rives* is distinguishable in several important respects. First, unlike the prior malpractice evidence in *Rives*, the Save Mart evidence was admissible to rebut Bigelow's mistake or accident defense as provided for by NRS 48.045(2). Indeed, the *Rives* court expressly recognized that other-act evidence may be admitted for such purposes. *Id.* at 144, 506 P.3d at 1070 (quoting NRS 48.045(2)). And unlike the trial in *Rives*, the hearing before the Board was not a jury trial. *See Rives*, 138 Nev. at 140, 506 P.3d at 1067. In administrative licensing proceedings, the trier of fact is a panel of professionals who are less likely to be swayed by testimony than a jury of impressionable laypersons. *Minton*, 110 Nev. at 1086-87, 881 P.2d at 1357; 2 *Administrative Law and Practice* § 5:52.

Moreover, in a jury trial, one may only speculate about the effect of evidence on the jurors. *Cf.* NRS 50.065(2) (setting forth prohibitions on calling a juror as a witness to testify about the effect of anything upon the juror's "mind or emotions as influencing the juror to assent to or dissent from the verdict"). In this case, by contrast, the Board was required by NRS 639.247(1) to conduct its hearing publicly and record those proceedings. And although Bigelow was in the unique position (as compared to a jury trial) to know exactly what evidence the Board relied upon, Bigelow fails to point to any statements in the transcript of the Board's deliberations where it referred to the Save Mart evidence or otherwise indicated that its members were influenced by that evidence.

Indeed, Bigelow concedes that the Board "did not discuss the Save-Mart evidence during their public deliberations" but argues that, despite the Board's silence, it cannot be said that the evidence "had no impact whatsoever on how [it] viewed [him]"—especially when the vote to find him guilty was just four-to-three. He further asserts that two of the four board members who voted against him were likely influenced by the improper character evidence because they "expressed very strong opinions against [his] credibility" and "were generally unwilling to give [him] the benefit of the doubt on any issue." But these vague assertions, on their own, do not support the conclusion that Bigelow was prejudiced by the admission of the Save Mart evidence. *See Wyeth*, 126 Nev. at 465, 244 P.3d at 778 (stating that demonstrating prejudice requires a party to show that "but for the alleged error, a different result might reasonably have been reached").

Finally, Bigelow cannot show he was prejudiced by the admission of the Save Mart evidence because, even without that evidence, substantial evidence exists in the record to support the Board's decision.

Redevelopment Agency, 140 Nev., Adv. Op. 44, 551 P.3d at 308 (stating that this court reviews an agency's factual findings deferentially for clear error or an abuse of discretion and will not overturn those findings if supported by substantial evidence); *Wyeth*, 126 Nev. at 465, 244 P.3d at 778 (setting forth the standard for determining whether a party was prejudiced by an alleged error).

Here, finding Bigelow guilty of all four of the counts against him required that the Board find that he intended to divert (or attempted to divert, acquire, or obtain) the six oxycodone pills. *See* 21 U.S.C. § 843(a)(3); 21 U.S.C. § 846; NRS 453.331(1)(d); NRS 453.391(1); NRS 639.210(4), (11), (12); NRS 639.255(3); NAC 639.945(1)(g)-(h). In reaching that conclusion, the board members who voted in favor of finding Bigelow guilty relied heavily during their deliberations on how unlikely or impossible they thought it was for the pills to have fallen upwards into Bigelow's breast pocket without any falling on the floor, especially when his pocket was tight and it would have been difficult or impossible to recreate the spill. They also noted that the video evidence did not show Bigelow losing his balance or spilling the pills as he originally claimed in his written statement and that the video did not show him looking for the missing pills despite thinking he had spilled them. In fact, one member thought it was suspicious that the video showed Bigelow making excess movements when the pills went missing and another member thought it was suspicious that Bigelow's left hand was not visible when the pills went missing. They also discussed how Bigelow did not tell his managing pharmacist that the pills were missing before leaving for lunch. Finally, at least one of the board members observed that there was an opportunity for diversion in Costco's perpetual

inventory because the count on open stock bottles could be rewritten by the staff, thereby causing losses in inventory to go unnoticed.

The Board's oral conclusions on these points during the deliberative process were supported by substantial evidence in the record. *See Milko*, 124 Nev. at 362, 184 P.3d at 384 (stating that "[s]ubstantial evidence exists if a reasonable person could find the evidence adequate to support the agency's conclusion"). Thus, under our deferential standard of review of agency decisions, there is substantial evidence in the record—irrespective of the Save Mart evidence—to support the Board's determination that Bigelow had "diverted and/or attempted to divert or acquire or obtain possession of" the six oxycodone tablets and its resulting decision to find him guilty on all four diversion counts. *See Redevelopment Agency*, 140 Nev., Adv. Op. 44, 551 P.3d at 308. As a result, Bigelow fails to show that a different result might reasonably have been reached had the Save Mart evidence been excluded, and he therefore cannot demonstrate that he was prejudiced by the admission of the Save Mart evidence. *See Wyeth*, 126 Nev. at 465, 244 P.3d at 778.

For the reasons set forth above, we conclude that the Board did not err or abuse its discretion in admitting the Save Mart evidence. Further, because the Board's determination that Bigelow was guilty of the four charges against him is supported by substantial evidence—even without the Save Mart evidence—we conclude that the district court properly denied Bigelow's petition for judicial review. Accordingly, we

ORDER the denial of the petition for judicial review AFFIRMED.[4]

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Connie J. Steinheimer, District Judge
Nevada State Board of Pharmacy/Las Vegas
Nevada State Board of Pharmacy/Reno
Rusby Law, PLLC
Washoe District Court Clerk

[4]Insofar as Bigelow raises arguments not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.