

STATE OF MICHIGAN
COURT OF APPEALS

RONALD R. STEWART, R. Ph.,

UNPUBLISHED

Petitioner-Appellee,

v

STATE OF MICHIGAN, DEPARTMENT OF
COMMERCE, BUREAU OF OCCUPATIONAL
AND PROFESSIONAL REGULATION, and
BOARD OF PHARMACY,

No. 190403
Wayne Circuit Court
LC No. 94-434134-AA

Respondent-Appellant.

LARRY L. COBB, R. Ph.,

Petitioner-Appellee,

v

STATE OF MICHIGAN, DEPARTMENT OF
COMMERCE, BUREAU OF OCCUPATIONAL
and PROFESSIONAL REGULATION, and BOARD
OF PHARMACY,

No. 190404
Wayne Circuit Court
LC No. 94-434136-AA

Respondent-Appellant.

Before: Holbrook, Jr., P.J., and Fitzgerald and Smolenski, JJ.

FITZGERALD, J. (dissenting.)

I agree with the majority that the circuit court erred in basing its decision to reverse the Board's order on the doctrines of res judicata and collateral estoppel. However, I respectfully dissent from the majority's conclusion that the inadmissible hearsay evidence on which the Board relied in revoking

petitioners' licenses constituted competent, material, and substantial evidence. See *Borchardt v Dep't of Commerce*, 218 Mich App 367, 369; 554 NW2d 348 (1996).

The investigative findings stated in the federal report are out-of-court statements offered for their truth and, therefore, are hearsay. *Id.* Unlike its federal counterpart, MRE 803(8), the hearsay exception dealing with public records and reports, does not allow for the admission of investigative reports into private civil cases. See *Bradbury v Ford Motor Co*, 419 Mich 550, 554; 358 NW2d 550 (1984); *Swartz v Dow Chemical Co*, 414 Mich 433, 443-444; 326 NW2d 804 (1982). Therefore, while use of the report and investigative findings was proper in the federal action under FRE 803(8)(C), use of the report in the state action was not. Because the DEA report was the only evidence offered against petitioners, it did not constitute competent, material, and substantial evidence to sustain the Board's decisions. I would affirm.

/s/ E. Thomas Fitzgerald