

In the  
**Supreme Court of Ohio**

STATE OF OHIO, ex rel.  
KAREN S. JORDAN,

Appellant,

v.

INDUSTRIAL COMMISSION OF  
OHIO, et al.,

Appellees.

Case No. 07-1901

On Appeal from the Franklin County  
Court of Appeals, Tenth Appellate  
District Case No. 06AP-908

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**MEMORANDUM IN RESPONSE TO MOTION FOR RECONSIDERATION  
OF APPELLEE, INDUSTRIAL COMMISSION OF OHIO**

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Appellant, Karen S. Jordan (“Jordan”), requests that this court reconsider its unanimous decision of December 3, 2008, affirming the lower court’s denial of her prayer for a writ of mandamus. She erroneously asserts two nonexistent errors in this court’s analysis of the intertwined issues of (1) retroactivity and (2) the absence of a vested right for the continued payment-in-full of brand name drugs after the changes in the payment schedule set forth in Ohio Adm.Code 4123-6-21(I) took effect. Jordan demands a superfluous analysis of R.C. 1.48 and makes the misguided assertion (without a supporting citation of law) that she had a right beyond what the applicable Revised and Administrative Codes conferred for the continued payment-in-full of certain name-brand prescriptions.

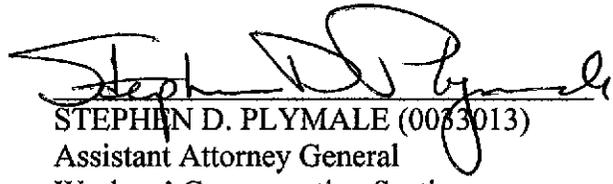
At no time has either party asserted the legislature intended that Ohio Adm.Code 4123-6-21(I), effective October 1, 2005, be applied retroactively. Consequently, an analysis under R.C. 1.48 was never at issue and any discussion of that code provision was unnecessary. Instead, this court went to the heart of the controversy and explained why, by definition, retroactivity was not an issue in Jordan’s case: she never had a vested right to choose a preferred manufacturer of a medication and never had a vested right to payment-in-full for her preferred medication.

Throughout the course of Jordan’s claim, her right to medication conferred by R.C. 4123.54 has been subject, pursuant to R.C. 4123.66, to an administrative agency’s complete discretion to determine what medications are covered by workers’ compensation and the amount to be paid from the state insurance fund. At no time during the course of her claim did Jordan have a vested right to payment-in-full for preferred medications; indeed, earlier versions of the workers’ compensation statutes placed a

monetary cap on medical services and medications, overridden only by a unanimous vote of the commissioners See *Luft v. Young* (1961), 114 Ohio App. 73, 74-75. By definition, retroactivity is limited to vested rights. See *Bielat v. Bielat* (2000), 87 Ohio St.3d 350, 357. Accordingly, Jordan's prayer for an extraordinary writ was correctly denied, and Jordan has failed to demonstrate why this court should reconsider its unanimous decision.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

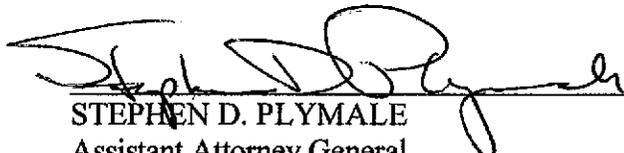
This is to certify that a copy of the foregoing Memorandum in Response to Motion for Reconsideration of Appellee, Industrial Commission of Ohio, was served by regular U.S. Mail, postage prepaid, on this 18<sup>th</sup> day of December, 2008, upon:

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