ADVANCE SHEET HEADNOTE
October 20, 2025

2025 CO 60

No. 23SC959, *Banner Health v. Gresser*—Medical Malpractice Damages—HCAA—Statutory Damages Cap—Grossly and Manifestly Excessive Damages—Jury's Common Law Authority to Determine Damages—Remittitur— Statutory Interpretation.

In this medical malpractice case, the supreme court interprets the Health Care Availability Act's ("HCAA") damages cap and considers how a trial court should determine the appropriate amount of damages to award if the court determines that it is appropriate to exceed the cap under the exception provided by the legislature in section 13-64-302(1)(b), C.R.S. (2025) ("subsection 302(1)(b)"). The supreme court holds that once a trial court has determined that the plaintiff has established good cause to exceed the HCAA's damages cap and that imposing the cap would be unfair, the court's subsequent determination as to the proper amount of damages is governed by common law; meaning, under subsection 302(1)(b)'s exception, the jury retains its authority to determine the amount of damages, subject only to the court's remittitur authority and its authority to review the award for the sufficiency of the evidence. In this case, therefore, the supreme

court affirms the trial court's entry of judgment for the full amount of the jury award, plus pre- and post-filing interest. It also affirms the judgment of the court of appeals.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2025 CO 60

Supreme Court Case No. 23SC959
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 22CA1502

Petitioner:

Banner Health, d/b/a North Colorado Medical Center,

v.

Respondents:

Chance Gresser, individually and as parent, natural guardian, next of friend and on behalf of his daughter, C.G.; and Erin Gresser, individually and as parent, natural guardian, next of friend and on behalf of her daughter, C.G.

Judgment Affirmed
en banc
October 20, 2025

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JUSTICE HOOD delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ**, **JUSTICE BOATRIGHT**, **JUSTICE GABRIEL**, **JUSTICE HART**, **JUSTICE SAMOUR**, and **JUSTICE BERKENKOTTER** joined.

JUSTICE HOOD delivered the Opinion of the Court.

¶1 In this medical malpractice case, Chance and Erin Gresser, on behalf of their minor daughter, C.G., seek to recover the full amount of damages awarded by the jury, which exceeds the $1 million cap imposed by the Health Care Availability Act ("HCAA"), §§ 13-64-101 to -503, C.R.S. (2025). The trial court found good cause to exceed the cap and concluded that imposing the cap would be unfair. The court entered judgment for the full amount of the jury award, plus pre- and post-filing interest, which totaled nearly $40 million. Banner Health, d/b/a North Colorado Medical Center, appealed from the judgment, and a division of the court of appeals affirmed. *Gresser v. Banner Health*, 2023 COA 108, ¶ 6, 543 P.3d 1059, 1067.

¶2 We granted Banner Health's petition for certiorari review and now affirm the judgment of the court of appeals. We hold that once a court has determined, under section 13-64-302(1)(b), C.R.S. (2025) ("subsection 302(1)(b)"), that the plaintiff has established good cause to exceed the HCAA's damages cap and that imposing the cap would be unfair, the court's subsequent determination as to the proper amount of damages is governed by common law; meaning, under subsection 302(1)(b)'s exception, the jury retains its authority to determine the amount of damages, subject only to the court's remittitur authority and its authority to review the award for the sufficiency of the evidence.

I. Facts and Procedural History

¶3 The Gressers sued Banner Health for medical malpractice. They alleged that Banner Health and its staff's negligence during labor, delivery, and postpartum care caused C.G. significant injuries; including, "severe permanent neurological injuries, developmental delays, a seizure disorder, communication delays, physical impairment, and intermediate cerebral palsy." It is undisputed that C.G. will need medical care for the rest of her life and that her life expectancy is significantly reduced because of these injuries.

¶4 A jury found Banner Health negligent, and it awarded the Gressers $27,647,274.23 in economic damages:

- $2,517,274.23 for past medical and other health care expenses;
- $23,930,000 for future medical and other health care expenses from 2022 through 2075; and
- $1,200,000 for lost wages from 2038 through 2070.

¶5 Because the HCAA generally limits medical malpractice damages to $1 million, *see* § 13-64-302(1)(b), the Gressers moved the court to exceed that statutory cap and receive the full jury award. The same day, Banner Health filed a motion to reduce the jury award to comply with the statutory cap.

¶6 The trial court found, based on the totality of the circumstances, that there was good cause to exceed the cap and that imposing the cap would be unfair. It then noted, however, that the HCAA didn't authorize the court to substitute its

judgment for that of the jury's regarding the amount of damages if the jury's award was supported by the record. Instead, the trial court believed it had only "a binary decision": enter an award for $1 million (the statutory limit) or "enter a judgment in the amount of damages awarded by the jury."

¶7 The trial court then found that Banner Health had failed to show that the jury's award was unsupported by the evidence or that the jury was improperly motivated by passion or prejudice. "To the contrary," the court found, "the jury's award of damages in this case reflects a careful and close examination and analysis of all the conflicting evidence related to the amount, duration, and severity of [C.G.'s] injuries and losses." The court further concluded that the jury's award wasn't grossly and manifestly excessive and that it would be improper for the court "to reweigh the evidence and adjust the damages awarded by the jury based on a reassessment of the evidence admitted at trial." The trial court then granted the Gressers' motion; denied Banner Health's motion; and entered judgment for the full jury award, plus pre- and post-filing interest: $39,845,196.83.

¶8 A division of the court of appeals affirmed the trial court's damages award, albeit based on different reasoning. *Gresser*, ¶ 6, 543 P.3d at 1067. The division disagreed with the trial court that, once a court determines it should exceed the cap, the court is limited to a binary choice as to the amount of damages. Instead, the division held that a trial court, after making the necessary findings to exceed

the cap, has some discretion to determine the amount of damages. *Id.* at ¶¶ 5–6, 543 P.3d at 1067; *see also Scholle v. Ehrichs*, 2024 CO 22, ¶ 7, 546 P.3d 1170, 1174 ("[T]he HCAA affords a trial court broad discretion to award damages in excess of that limit if the plaintiff shows good cause that imposing the cap would be unfair."). Because the trial court had engaged in the appropriate analysis before adopting the jury's damages calculation, the division still affirmed the Gressers' damages award. *Gresser*, ¶ 6, 543 P.3d at 1067.

¶9 We then granted Banner Health's petition for certiorari review.[1]

II. Analysis

¶10 We begin with the applicable standard of review and a reminder of our canons of statutory interpretation. We then discuss the jury's common-law authority to determine damages and consider how and to what extent the legislature's enactment of the HCAA modified that authority.

A. Standards of Review and Statutory Interpretation

¶11 The issue here presents legal questions: whether the division correctly interpreted the HCAA and whether the division applied the correct legal standard

[1] We granted certiorari to review the following issue:

> Whether the court of appeals erred in concluding that a trial court is limited to reviewing damages under a remittitur standard if the court finds grounds to exceed the damages cap set forth in section 13-64-302(1)(b), C.R.S. (2023).

in reviewing the damages award. Therefore, our review is de novo. *See Scholle*, ¶ 22, 546 P.3d at 1176; *Sunahara v. State Farm Mut. Auto. Ins. Co.*, 2012 CO 30M, ¶ 12, 280 P.3d 649, 653.

¶12 When interpreting statutes, our primary goal is to discern and effectuate the legislature's intent. *Scholle*, ¶ 22, 546 P.3d at 1177. To do so, we begin with the plain language of the statute, giving words and phrases their ordinary meanings and reading the statutory scheme as a whole to give sensible and harmonious effect to all of its parts. *Id.* We also read the words and phrases in context and construe them according to the rules of grammar and common usage, neither adding nor subtracting words from the statute. *People v. Diaz*, 2015 CO 28, ¶ 12, 347 P.3d 621, 624. If the language is clear and unambiguous, we apply the statute as written. *Scholle*, ¶ 22, 546 P.3d at 1177.

¶13 If, however, the statute is ambiguous, we may consider other interpretive aids; including, the legislative history, the purpose of the statute, and the consequences of a particular construction. § 2-4-203, C.R.S. (2025); *see also Miller v. Crested Butte, LLC*, 2024 CO 30, ¶ 24, 549 P.3d 228, 234 ("A statute is ambiguous when it is reasonably susceptible of multiple interpretations." (quoting *Elder v. Williams*, 2020 CO 88, ¶ 18, 477 P.3d 694, 698)).

B. Damages at Common Law

¶14 At common law, determining the amount of damages is solely within the province of the jury. *Ochoa v. Vered*, 212 P.3d 963, 972 (Colo. App. 2009). Courts can always, of course, review the sufficiency of the evidence in support of an award, but may otherwise disturb a jury's verdict in only two limited ways. *Averyt v. Wal-Mart Stores, Inc.*, 265 P.3d 456, 462 (Colo. 2011); *Burns v. McGraw-Hill Broad. Co.*, 659 P.2d 1351, 1355–56 (Colo. 1983).

¶15 *First*, if, upon either party's motion for a new trial, the court determines that the award is "so excessive as to indicate that the jury acted out of passion, prejudice, or corruption," the court must order a new trial on all issues. *Averyt*, 265 P.3d at 462; *see also Burns*, 659 P.2d at 1356. But "absent an award so excessive or inadequate as to *shock the judicial conscience* and to raise an irresistible inference that passion, prejudice, corruption or other improper cause invaded the trial, the jury's determination of the fact is considered inviolate." *Higgs v. Dist. Ct.*, 713 P.2d 840, 860–61 (Colo. 1985) (emphasis added) (quoting *Hurd v. Am. Hoist & Derrick Co.*, 734 F.2d 495, 503 (10th Cir. 1984)).

¶16 *Second*, if the court determines that the jury's award is grossly and manifestly excessive, but not the result of bias, passion, or prejudice, "the court may order a remittitur and alternatively authorize a new trial on damages alone if the plaintiff refuses to accept the remittitur." *Id.* at 861; *see also Marks v. Dist. Ct.*,

643 P.2d 741, 744 (Colo. 1982). "A remittitur is '[t]he process by which a court reduces or proposes to reduce the damages awarded in a jury verdict.'" *Garhart ex rel. Tinsman v. Columbia/Healthone, L.L.C.*, 95 P.3d 571, 582 (Colo. 2004) (alteration in original) (quoting *Remittitur*, Black's Law Dictionary (7th ed. 1999)).

¶17 Colorado embraces common law, § 2-4-211, C.R.S. (2025), and unless abrogated by the legislature, common-law principles still apply to damages awards. *Giampapa v. Am. Fam. Mut. Ins. Co.*, 64 P.3d 230, 237 (Colo. 2003). To abrogate common law, the legislature must manifest its intent to do so expressly or by clear implication, and we strictly construe statutes that derogate from common law. *Vigil v. Franklin*, 103 P.3d 322, 327 (Colo. 2004).

¶18 The legislature partially abrogated common law when it enacted the HCAA by replacing the jury's authority to determine damages with a presumptive damages cap.

C. The HCAA

1. The Damages Cap

¶19 The HCAA limits "[t]he total amount recoverable for all damages" in a medical malpractice case to $1 million.[2] § 13-64-302(1)(b). Enacting this limit was

[2] While this case was pending, the legislature amended the damages cap. Ch. 325, sec. 6, § 13-64-302(1)(b), 2024 Colo. Sess. Laws 2170, 2176; *see also* Ch. 325, sec. 4, § 13-21-203(1), 2024 Colo. Sess. Laws 2170, 2173–75. The statute now provides that

> [t]he total amount recoverable for all damages [in a medical malpractice case] shall not exceed the greater of one million

an "exercise of the General Assembly's power to define and limit a cause of action." *Garhart*, 95 P.3d at 582 (explaining that if the legislature establishes a statutory cause of action, it may also prescribe reasonable limits on the amount of damages recoverable under that statute). So, under the HCAA, a jury calculates the amount of damages without being instructed on the cap, but the court presumptively limits the award to $1 million if the jury's calculation exceeds that amount. § 13-64-302(1)(b).

¶20 In defining this cause of action and its limits, however, the legislature also enacted an exception under which a plaintiff may challenge the imposition of the $1 million cap.

2. The Exception

¶21 Subsection 302(1)(b) provides that

> if, upon good cause shown, the court determines that the present value of past and future economic damages would exceed such limitation and that the application of such limitation would be unfair, the court may award in excess of the limitation the present value of additional past and future economic damages only.

> dollars . . . or one hundred twenty-five percent of the noneconomic damages limitations set forth in section 13-21-203(1)(b) in effect at the time the acts or omissions occurred, present value per patient.

§ 13-64-302(1)(b); *see also* § 13-21-203(1)(b), C.R.S. (2025). For ease of reference, and because it doesn't affect the outcome, we nonetheless refer to the cap as the "$1 million cap" in this opinion.

See also § 13-64-202(7), C.R.S. (2025) (defining "[p]resent value" as "the amount as of a date certain of one or more sums payable in the future, discounted to the date certain"); *City of Aspen v. Burlingame Ranch II Condo. Owners Ass'n*, 2024 CO 46, ¶ 38, 551 P.3d 655, 664 ("Economic loss is defined generally as damages other than physical harm to persons or property." (quoting *Town of Alma v. AZCO Constr., Inc.*, 10 P.3d 1256, 1264 (Colo. 2000))). The exception requires courts to resolve two questions: (1) whether to exceed the cap and, if so, (2) the amount of damages to award.

¶22 The parties generally agree on the law applicable to the court's first determination: The party seeking to exceed the cap—the movant—bears the burden of showing good cause and unfairness, *Scholle*, ¶ 30, 546 P.3d at 1178; *Wallbank v. Rothenberg*, 140 P.3d 177, 180 (Colo. App. 2006), and the court must consider the totality of the circumstances in determining whether the movant has carried that burden, *Pressey ex rel. Pressey v. Child.'s Hosp. Colo.*, 2017 COA 28, ¶ 10, 488 P.3d 151, 155, *overruled on other grounds by, Rudnicki v. Bianco*, 2021 CO 80, ¶ 44, 501 P.3d 776, 785–86; *see also Scholle*, ¶ 30, 546 P.3d at 1178.

¶23 The parties disagree, however, on what law governs the court's second determination: how to determine the amount of damages beyond the $1 million cap.

¶24 Banner Health, supported by several amici, argues that the HCAA's plain language—which provides that a court "*may* award *in excess* of the limitation . . . *additional* . . . damages"—indicates the legislature's intent to grant trial courts broad discretion to determine an amount of damages above the $1 million cap. § 13-64-302(1)(b) (emphases added). Accordingly, the starting point for the court's damages calculation is the $1 million cap, not the jury's damages award. As amicus Coloradans Protecting Patient Access explains, the HCAA's cap replaces the jury's damages award, meaning that the jury award ceases to exist once the cap is imposed. So, if the court decides to exceed the cap, there's no award for the court to reduce under its common-law remittitur authority. Instead, Banner Health and its supporting amici argue, the court "may," but need not, award "additional" damages that exceed $1 million if the plaintiff can establish good cause and fairness for the additional amount. To conclude otherwise—that is, to have the court begin its damages calculation from the jury's initial award—would limit the court's determination of amount to a mere sufficiency-of-the-evidence review of the jury's damages award. But because courts can always review a jury's damages award for the sufficiency of the evidence, this interpretation would render the good cause and unfairness language of the exception meaningless. After all, Banner Health notes, "the purpose of the cap [is] to limit damages

regardless of whether the jury found them to be appropriate." *Wallbank*, 140 P.3d at 181.

¶25 Conversely, the Gressers, also supported by amici, argue that the good cause and unfairness language governs only the court's first determination of whether to exceed the statutory cap and not its second determination of the amount of damages. Rather, once a court decides to exceed the cap, the court can't substitute its judgment for that of the jury's, and so, the jury's award stands, subject to common-law challenges. And under common law, the party challenging the award as excessive bears the burden of showing that the jury's award should be reduced. *See Atl. & Pac. Ins. Co. v. Barnes*, 666 P.2d 163, 165 (Colo. App. 1983) (relying on *Am. Ins. Co. v. Naylor*, 70 P.2d 349, 352 (Colo. 1937), to support the proposition that "the party seeking to change the status quo has the burden of proof").

¶26 To resolve this conflict, we begin with the statute's plain language. As a reminder, here's the relevant portion of the statute:

> *[I]f*, upon good cause shown, the court determines that the present value of past and future economic damages would exceed such limitation and that the application of such limitation would be unfair, the court may award in excess of the limitation the present value of additional past and future economic damages only.

§ 13-64-302(1)(b) (emphasis added).

¶27 The legislature structured the exception as a conditional, two-stage process. We know this because of the legislature's use of the word "if." "If" typically introduces a conditional requirement that must be met before a specified result can occur. *See* Merriam-Webster, *'If' vs. 'Whether': Similar But Different*, https://www.merriam-webster.com/grammar/if-vs-whether-difference-usage [https://perma.cc/T4XN-9FZJ] (explaining that the word "if" is used in a "conditional sentence," often but not necessarily coupled with "then," to "state[] a relation between cause and effect" or to "state[] what must occur before something else"). The conditional requirement is typically offset from the rest of the sentence by commas. *Id.* So, in subsection 302(1)(b), *if* the court determines it should exceed the statutory cap, *then* it may award damages in excess of the cap.

¶28 Part of the interpretive conundrum in this case is the additional clause—"upon good cause shown"—set off by commas, following "if." Does that clause apply to both determinations (the condition and the result) or only to the first (the condition)?

¶29 According to the common rules of grammar, when a phrase is set off by commas, it typically relates to the word or phrase that precedes it. *Huffman v. City & Cnty. of Denver*, 2020 COA 59, ¶ 16, 465 P.3d 108, 112. So here, the phrase "the court determines that the present value of past and future economic damages would exceed such limitation and that the application of such limitation would be

unfair" relates to the preceding phrase, "upon good cause shown," which relates to the preceding word "if." This structure means that the good-cause and unfairness requirements apply only to the court's first, conditional determination—whether to exceed the $1 million cap—and not to the resulting second determination—the amount of damages. § 13-64-302(1)(b); *see also Huffman*, ¶ 16, 465 P.3d at 112.

¶30 Accordingly, we reject Banner Health's invitation to interpret the statute as imposing a "good cause and fairness" standard on the court's determination of the amount of damages beyond the statutory cap. But if good cause and fairness aren't the standard for determining a higher amount, how should a court proceed? Because the statute is silent on this matter, we must look beyond the statute's plain language to answer this question. We focus on two points.

¶31 *First*, the legislature clearly abrogated the jury's authority to determine damages in the first instance by presumptively limiting damages to $1 million. The legislature then made the court the gatekeeper on whether to exceed that amount under the exception. But the statute is silent on how to calculate damages under the exception. And this silence doesn't manifest a clear intent to abrogate the jury's common-law authority to determine the amount of damages in this context. Instead, once the court opens the gate and authorizes a damage award

beyond the cap, we believe the legislature intended for the jury to retain its common-law authority to determine the appropriate amount of damages.

¶32 *Second*, the legislature enacted the HCAA "to assure the continued availability of adequate health-care services to the people of this state by containing the significantly increasing costs of malpractice insurance for medical care institutions and licensed medical care professionals." § 13-64-102(1), C.R.S. (2025). When discussing amendments to the bill, including the conditions by which a court would be able to exceed the cap, one senator observed, however, that "unless there is some relief valve . . . , I think that there are going to be occasions of terrible miscarriages of justice if there is just a cold-hearted limit to the amount of damages on noneconomic losses." *Gen. Elec. Co. v. Niemet*, 866 P.2d 1361, 1365 (Colo. 1994) (quoting Second Reading of S.B. 67 before the Senate, 55th Gen. Assemb., 2d Reg. Sess. (Feb. 25, 1986) (statement of Sen. Meiklejohn)). And, as bill sponsor Senator Hefley said, "We do want to do two or three things with this [bill]. We want to bring some predictability back into the system and . . . we do not want to penalize legitimate victims who have had extensive pain and suffering . . . ." *Id.* (quoting Second Reading of S.B. 67 before the Senate, 55th Gen. Assemb., 2d Reg. Sess. (Feb. 25, 1986)); *see also People v. Sprinkle*, 2021 CO 60, ¶ 22, 489 P.3d 1242, 1246 ("[T]he testimony of a bill's sponsor concerning its purpose and anticipated effect can be powerful evidence of legislative intent." (quoting

Vensor v. People, 151 P.3d 1274, 1279 (Colo. 2007))). These statements indicate that "it was the legislature's intention to balance 'the concern over insurance affordability and predictability with concern for fairness to seriously injured people.'" *Colo. Permanente Med. Grp., P.C. v. Evans*, 926 P.2d 1218, 1229 (Colo. 1996) (quoting *Niemet*, 866 P.2d at 1365).

¶33 Therefore, we conclude that the legislature didn't intend to completely abrogate the jury's common-law authority to determine damages in medical malpractice cases. Instead, if a court determines that subsection 302(1)(b)'s exception applies, it should defer to the jury's common-law authority to determine damages, subject to the court's continuing authority to review the sufficiency of the evidence and to entertain certain narrow excessive-amount challenges as outlined above in Part II.B.

D. Application

¶34 Here, after determining that subsection 302(1)(b)'s exception applied, the trial court reviewed the record and found that the evidence was sufficient to support the jury's damages award and that the award wasn't grossly and manifestly excessive. It then entered judgment for the jury's full damages award. We perceive no abuse of discretion in the trial court's findings and therefore, like

the division, we affirm the trial court's judgment.[3] *See Gresser*, ¶¶ 20–22, 543 P.3d at 1069–70; *see also Averyt*, 265 P.3d at 462 (explaining that an appellate court reviewing a jury's damages award must "view the record in the light most favorable to the prevailing party and draw every inference deducible from the evidence in favor of that party," and the court may not overturn the award if it "'can be supported under any legitimate measure for damages'" (quoting *Husband v. Colo. Mountain Cellars, Inc.*, 867 P.2d 57, 60 (Colo. App. 1993))).

III. Conclusion

¶35 Therefore, we affirm the judgment of the court of appeals.

[3] Based on our resolution of this issue, we need not address Banner Health's argument that the billed amounts, which are largely based on chargemaster rates, don't reflect the amount the Gressers actually paid for past medical expenses. *See Rudnicki*, ¶ 68 n.3, 501 P.3d at 791 n.3 (Hart, J., dissenting) (defining a hospital's "chargemaster database" as "a comprehensive list of charges for every supply or service a hospital might provide in serving a patient" that the hospital uses to produce "a 'bill' for medical services").