Tips and Tactics to Get Justice from a Healthcare System Determined to Ruin Your Case

THE INSIDER'S GUIDE TO TEXAS & NEW MEXICO MEDICAL MALPRACTICE CLAIMS

S. CLARK HARMONSON

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Dear Reader,.

Thank you for making the choice to get this special medical malpractice report.

Every year, thousands of people like you are injured or killed as a result of medical errors. Did you know that medical errors account for as many as 225,000 deaths every year and medical errors are one of the leading causes of death nationwide? It is no surprise then that many of your neighbors and people in the Borderland have gone through exactly what you are dealing with right now.

You should know that there is a path for you. I also have a piece of good news for you... By getting this report, you've taken the first of several steps you need to a successful outcome for your medical malpractice case. You could have ignored this information and kept on sifting through all the random pieces of information available for you online.

Instead, you now have a comprehensive resource about medical malpractice claims in Texas and New Mexico.

Recently we helped our client Bill settle a medical malpractice case against a local hospital when he developed severe Stage 4 pressure ulcers after a hospitalization for a heart procedure. The hospital's nursing staff failed to turn Bill at regular intervals and Bill got large pressure ulcers on his backside and on his heels. He had to have additional surgeries and hospitalizations to help heal his pressure ulcer wounds. We were able to get Bill's case settled and put a significant sum of money in his pocket after we filed a lawsuit against the local hospital and its administrator. While the results of each case depend on their own unique facts and circumstances, Bill's story is one of many of the medical malpractice cases that we have handled at Harmonson Law Firm in Texas and New Mexico.

Once you've looked through this report, you should feel free to call us to discuss the facts of your medical malpractice case. My hope is that you will look to us for help when you need it. We are excited to serve you.

Sincerely,

S. Clark Harmonson

P.S. We are just a phone call away at **(915) 229-2222.** Make sure you mention that you downloaded this report, and we'll answer whatever questions you may have!

How Do I Hire the "Right" Medical Malpractice Lawyer For My Case?

All lawyers are not the same when it comes to medical malpractice lawsuits!

Choosing a lawyer is perhaps the most important decision you will make for your medical malpractice lawsuit. There are over100,000 lawyers currently licensed in Texas and New Mexico. Lawyer advertising is everywhere, on TV commercials, on the internet, on the sides of buses and on billboards. Many of these lawyers promise to be tough and aggressive but don't have the experience or expertise to take on a medical malpractice case. Many malpractice victims fall prey to good advertising.

A good lawyer can literally be the difference maker in the value of your case. Here are some pointers to consider when choosing the right lawyer for your medical malpractice case.

- **Don't hire a generalist.** The lawyer you choose should not "dabble" in medical malpractice law. The law is simply too complex and the claims process too intricate to be handled by a lawyer or firm that doesn't specialize in medical malpractice.
- **Look for an experienced medical malpractice attorney.** As a rule of thumb, your lawyer should have 10 years of first-hand medical malpractice experience and devote 100% of his or her practice to representing injured people. Do your homework online and look for a lawyer that has significant medical malpractice verdicts and settlements, has jury trial experience and who has good reviews from former clients and other lawyers. I trained under a mentor lawyer learning medical malpractice for almost 10 years before I started my own practice. During that time, I put in my time learning the ropes of how to investigate, prepare and prosecute all aspects of medical malpractice cases, from the initial consultation through trial and appeal. The firm's other lawyer, Hadley Huchton, defended doctors and other healthcare professionals for 12 years before she had a change of heart. She now devotes the entirety of her practice to helping people just like you who have been injured by medical malpractice.

Now, let's talk about the specific medical malpractice laws in Texas and New Mexico.

My Injury Occurred in Texas, Do I Have A Medical Malpractice Case?

The medical malpractice lawyers at Harmonson Law Firm are among the leading medical malpractice lawyers in the El Paso, Texas area. Every day, we are asked to review potential medical malpractice claims against local doctors, hospitals and other healthcare providers like nurses, physicians' assistants and nurse practitioners. This guide will provide a brief overview of the Texas laws with respect to medical malpractice cases.

What is the law that governs medical malpractice lawsuits in Texas?

Texas medical malpractice is governed by Chapter 74 of the Texas Civil Practice and Remedies Code. Chapter 74 defines the rules and laws that govern "healthcare liability claims" in the State of Texas. If the claim is a "healthcare liability claim" according to Chapter 74, there are many procedural hurdles to overcome and certain caps on the amount of damages that an injured person can recover.

What claims are considered medical malpractice claims governed by Chapter 74?

All healthcare liability claims are governed by Chapter 74. A "healthcare liability claim" means "a cause of action against a health care provider or physician for treatment, lack of treatment, or other claimed departure from accepted standards of medical care, or health care, or safety or professional or administrative services directly related to health care, which proximately results in injury to or death of a claimant, whether the claimant's claim or cause of action sounds in tort or contract." Virtually all claims involving healthcare are governed by the Texas medical malpractice statute Chapter 74.

What healthcare providers are covered by Chapter 74?

All healthcare providers, of every sort and type, fall under the protections of Chapter 74. Healthcare providers that are specifically included in the definition of a

healthcare provider are physicians, registered nurses, dentists, podiatrist, pharmacists, chiropractors, optometrists, and health care institutions (like hospitals and hospital systems, surgical centers, assisted living facilities, EMS service providers, hospice, nursing homes, facilities for the mentally retarded, and dialysis centers). The directors, officers, partners, members, employees and independent contractors of these facilities and healthcare providers are included in the definition.

Essentially, all conduct that relates to healthcare by any type of healthcare provider is governed by the Texas medical malpractice laws found in Chapter 74. These laws are designed to protect doctors, hospitals and other healthcare providers and an experienced medical malpractice lawyer will need to know all of the "ins and outs" of Chapter 74 to help with a claim.

Do I have to give notice of a claim before filing a medical malpractice lawsuit in Texas?

Yes, Chapter 74.051 provides a required pre-suit notice. Written notice of a healthcare liability claim shall be given by certified mail, return receipt requested, to each physician and healthcare provider against whom a claim is made at least 60 days prior to the filing of a lawsuit in Texas based on a medical malpractice claim. Included with the notice letter, the injured person is required to fill out and sign an authorization which provides information about the claimant's medical history and allows the physician or healthcare provider to gather relevant medical records. If a person does not provide the required notice letter, the court can abate a medical malpractice lawsuit until such notice is provided.

Perhaps the only benefit to an injured claimant found in Chapter 74, once the Chapter 74 letter has been sent to one doctor, healthcare provider or healthcare institution, the applicable statute of limitations is extended 75 days as to any and all potential defendants.

Do I have to provide evidence of my claim to a Court as a condition to filing a lawsuit?

In a Texas medical malpractice lawsuit, Chapter 74.351 states that within 120 days of each defendant doctor or healthcare provider filing an answer to the lawsuit, the claimant (the injured party) must serve on that party an expert report. The expert report must provide a fair summary of the expert's opinions concerning the

applicable standard of care, the manner in which the physician or healthcare provider breached the standard of care, and the casual relationship between the breach of the standard of care and the injuries, harm or damage claimed.

The expert report must be written by one or more experts. In a claim against a physician, only another physician can act as an expert to write the report. That physician must have the requisite qualifications to opine as to the care rendered and must be practicing medicine at the time the testimony is given or was practicing at the time the claim arose. In claims against non-physician healthcare providers, a physician is not required to opine as to the standard of care; however, the expert needs to have the necessary qualifications, education and training to render opinions as to the standard of care. For example, a nurse with education, experience and training in labor and delivery can opine as to the negligence of another nurse in a case involving the labor and delivery department of a hospital.

A physician is required to opine as to the casual relationship between the breach of the standard of care and the injury, harm or damage claimed in every expert report. Hence, in every expert report, a physician must testify as to "causation".

There are numerous Texas supreme court cases that have analyzed every aspect of the expert report requirements. If the expert report is not filed or is found to be deficient, the lawsuit will be dismissed and the defendant will be entitled to an award of attorney's fees against the claimant. It is very important to get the expert report right. It is important that a person injured by medical malpractice hire a lawyer that knows the laws concerning the expert report requirements so that the claim is not dismissed by the court.

What happens if I fail to file an expert report under Chapter 74?

If an expert report is not filed or is found to be insufficient by the court, the court is required to award attorney's fees and costs against the injured claimant and dismiss the lawsuit against the provider without the possibility of refiling the lawsuit. It is very important that an expert report that follows the requirements of Chapter 74 be timely filed. There are many cases authored by the Texas Supreme Court that provide guidance as to the exact requirements of a Chapter 74 expert report. Failure to comply with the expert report requirements of Chapter 74 mean death to a lawsuit and an award of attorney's fees against the person bringing the claim. For that reason, we counsel people who would like to bring a medical malpractice lawsuit to hire a medical malpractice lawyer that knows and has studied all of these laws in depth.

Are there any caps on the amount of damages that can be recovered in a Texas Medical Malpractice claim?

Yes, there are significant caps that can be recovered for non-economic damages. The cap in Texas is $250,000.00 for non-economic damages in any lawsuit against one or more doctors or healthcare providers, regardless of the number of defendant doctors or healthcare providers. If one or more hospital or other healthcare institution is involved in the lawsuit, there is an additional $250,000 in non-economic damages that can be recovered against each hospital or healthcare institution with a total maximum of $500,000 aggregate maximum that can be recovered against all hospitals and healthcare institutions.

The caps on damages only apply to non-economic damages. Non-economic damages include pain and suffering, mental anguish, disfigurement, and physical impairment. For those types of "intangible" damages, the above caps apply. There are no caps on economic damages. Economic damages include items such as past and future medical expenses, lost earnings and loss of earning capacity and loss of household services.

In a wrongful death or survival lawsuit, in addition to the above caps, there is a maximum cap of $500,000 (which is adjusted for inflation).

What is the statute of limitations for a medical malpractice claim in Texas?

A statute of limitations is a law that governs the time limit for filing a lawsuit. In Texas, the statute of limitation for filing a medical malpractice lawsuit is two years from the occurrence of the breach or tort or from the date the medical or health care treatment that is the subject of the claim or the hospitalization for which the claim is made is completed. The statute also provides that for minors under the age of 12, the statute of limitations is extended until the minors 14th birthday. However, because of constitutional issues, it is believed that the statute of limitations for a minor will not run until 2 years from the minor's eighteenth birthday.

There are some ways in which the statute of limitations may be lengthened, for example, when the injury is not able to be discovered until after 2 years from the date of the tort. For example, the discovery rule may extend the statute of limitations when a retained sponge is left inside a patient after a medical procedure and is not found until many years later.

There is also a state of repose of ten years. A statute of repose is an absolute bar to recovery after a set amount of time. The statute of repose in Texas is ten years from the date of the tort or breach.

My Injury Occurred in New Mexico, Do I Have a Medical Malpractice Case?

Harmonson Law Firm is proud to have represented numerous victims of medical malpractice in the Las Cruces, New Mexico area and throughout New Mexico. Every day, we are asked to review potential medical malpractice claims against local doctors, hospitals and other healthcare providers like nurses, physicians' assistants and nurse practitioners. This guide will provide a brief overview of the New Mexico laws with respect to medical malpractice cases.

What is the law that governs medical malpractice lawsuits in New Mexico?

New Mexico medical malpractice is governed by the New Mexico Medical Malpractice Act found at New Mexico Statutes - Article 5 — Medical Malpractice Act, 41-5-1 through 41-5-29 (the "Act"). The Act provides for limitation on liability and other procedural protections for physicians and other healthcare providers who qualify as "qualified healthcare providers" by purchasing certain insurance required under the Act. If a doctor or healthcare provider does not qualify as a "qualified healthcare provider", then there are no limitations on liability and no procedural protections available.

So, the first item of business in pursuing a medical malpractice case in New Mexico is determining whether the healthcare provider is qualified under the Act. To determine is a provider is qualified, you simply need to write a letter to the medical review commission established by the Act to find out if the provider is qualified. If a healthcare provider is not, you can proceed to file a lawsuit against that healthcare provider and do not have any of the caps on damages or the procedural requirements required by the Act. If the healthcare provider is qualified under the Act, then, there are numerous provisions that are designed for the healthcare provider's protection. The lawyer you chose to assist with your medical malpractice case must be familiar with these laws in order to comply with the law and maximize the value of your case.

How does a doctor or healthcare provider qualify as a "qualified healthcare provider" under the Act?

A healthcare provider can choose to become a "qualified healthcare provider" by purchasing the insurance authorized under the Act. The provider must purchase malpractice liability insurance issued by an authorized insurer in the amount of at least two hundred thousand dollars ($200,000) per occurrence. Further, the healthcare provider must pay an annual surcharge to help pay for a patient compensation fund that is available to with malpractice claims against qualified healthcare providers. There is also a way for hospitals to become covered by the Act; however, we have seen that hospitals choose to not be covered under the Act and purchase their own malpractice liability coverage.

What caps on damages are available for "qualified healthcare providers"?

There are significant caps on damages applicable to qualified healthcare providers. First, there is a maximum $600,000 per occurrence amount recoverable by all persons for or arising from any injury or death to a patient as a result of malpractice. This means that the maximum dollar amount the patient and his or her family members can recover is $600,000. For example, in a wrongful death claim, there may be several family members who are entitled to recover because of a doctor's malpractice; however, the maximum amount that all family members can recover shall not exceed the total of $600,000. These caps do not apply to punitive damages and medical care and related benefits. The Act also provides that future medical expenses are not recoverable in a medical malpractice claim. For future medical care, the patient shall be furnished with all medical care and related benefits caused by the healthcare provider's malpractice, which is paid by the provider's $200,000 insurance coverage or by the patient compensation fund after that.

When a healthcare provider purchases the $200,000 insurance authorized by the Act, then the healthcare provider's personal liability is capped at that $200,000. Any judgment or settlement in excess of the $200,000 is to be paid by a Patient Compensation Fund set up by that the Act.

What is the Patient Compensation Fund?

The Act created a patient compensation fund to pay for settlements and judgments of medical malpractice claims that exceed the $200,000 insurance limit required under the Act. The Act created a "patient's compensation fund" to be

collected and received by the superintendent for exclusive use of satisfying settlements and judgements against qualified healthcare providers. The fund and any income thereon is held in trust for paying these claims. The fund is funded by surcharges that qualified healthcare providers pay every year to qualify under the Act.

The following is an example of how the Act, the provider's insurance and the patient compensation fund work in tandem to pay meritorious claims. We recently finished a case against a family care practitioner who misdiagnosed the signs and symptoms of heart disease leading to the patient's death. We represented the patient's surviving spouse and children in a subsequent lawsuit. The doctor was a qualified provider under the Act. Because the doctor was covered by the Act, his personal liability was capped at $200,000 which was covered by the insurance he purchased. Even though we represented numerous claimants, their total potential recovery was capped at $600,000 with a potential of $200,000 paid by the doctor's insurance and $400,000 from the patient compensation fund. In mediation (settlement negotiation meeting), the insurance carrier for the doctor's insurance tendered the doctor's $200,000 limits. Then a special adjuster for the patient compensation fund paid an additional $300,000 to give a gross settlement of $500,000.

Are there any pre-lawsuit requirements we must comply with under the Act?

The Act created a medical review commission which was established to review claims of medical malpractice against qualified healthcare providers. Prior to filing a lawsuit against a qualified healthcare provider, the claimant must submit a written application to the review commission outlining the alleged malpractice. If the healthcare provider is not covered by the Act, there are no such requirements and suit can proceed without the necessity of following any of the steps outlined herein.

Once the application is received, a panel is formed consisting of three panel members from the health care provider's profession and three panel members from the state bar association. At that time, a hearing is set and the claimant and the healthcare provider are invited to attend and provide evidence of their claim.

After the hearing, the panel will decide concerning whether there is substantial evidence that the acts complained of occurred and that they constitute malpractice; and whether there is a reasonable medical probability that the patient was injured thereby. The panel's decision is non-binding and not admissible in

evidence in a subsequent lawsuit. However, the purpose of the panel is to either help the parties negotiate a settlement if there is a finding of malpractice by the panel and/or to discourage litigation by the claimant if he or she loses at the panel hearing.

What is the statute of limitations for a medical malpractice claim in New Mexico?

A statute of limitations is a law that governs the time limit for filing a lawsuit. In New Mexico, the statute of limitation for filing a medical malpractice lawsuit is three years from the date of alleged malpractice. The Act provides that there are no tolling provisions for claims against qualified healthcare providers (such as the discovery rule). The Act also provides a minor under the full age of six years shall have until his ninth birthday in which to file suit.

Other Questions You Should Ask Before Hiring a Medical Malpractice Lawyer

1. What is a contingency fee contract and how much is your fee?

We do not charge our clients any money up front. We only charge a fee if and when there is a settlement of your case or if we collect on a judgment after a lawsuit has been filed. If we are unable to get you money for your medical malpractice case, then there is no fee for our services. This type of arrangement is known as a contingent fee. A contingent fee shifts the risk of loss onto the attorney so that you do not have to worry about paying us on an hourly basis. We also advances all case expenses. Those case expenses are then reimbursed to the firm if and when there is a successful settlement or collected judgment.

At Harmonson Law Firm, we charge the following contingent fees:

- 35% if the claim is settled before a lawsuit has to be filed
- 40% if there is a lawsuit filed but it is settled before trial
- 45% if there is a trial or an appeal of the case.

The increased fee is based on the fact that as the longer the case goes on, the more time and money the firm has to spend on the case. The fees that we charge are in keeping with the standard fees charged in the industry. The most important question you should be asking is not how much the fee is, but whether I have chosen the right attorney to represent me for my case. Choosing a law firm is probably the single most important decision you will make. Picking an inexperienced attorney or an attorney that does not have the financial ability to go the distance with the insurance company and their lawyers could mean the difference in a maximum money recovery and a mediocre recovery or worse.

1. How much is my case worth?

This is naturally a very good question, because we all want to know what the bottom line is. The truthful answer is that when we initially meet with a client, there is no simple answer to this question. *Be wary of an attorney that tells you otherwise or makes promises about how much money he or she can get you.*

What a good lawyer can guarantee is that the lawyer will work his or her hardest to get you the absolute maximum amount of money for your case. I think of several factors when determining the amount of money a case is worth:

- **Severity of the Injuries:** Simply put, the worse you are hurt, the more money your case will be worth.
- **Severity of Wrongdoing:** The worse doctor, nurse or hospital's conduct, the more money your case is worth. We are always on the lookout for bad conduct on the part medical professional that caused your injuries.
- **Other Considerations:** The value of your case also depends on the statutory caps on damages in each individual state. A reasonable settlement offer should include all your medical bills, lost wages and a significant sum for pain and suffering and your other harms and losses all in keeping with the medical malpractice caps on damages in the state where the malpractice occurred. If the doctor's or hospital's insurance company is not willing to fairly pay you in a settlement, a good lawyer is ready, willing and able to take your case to trial.

2. *Why is my health insurance company entitled to a portion of my settlement?*

Remember signing a bunch of forms when you signed up for your health insurance? Me neither. Well, even if you don't remember, you did. Deep in the agreement with your health insurance is a subrogation clause. Subrogation is a fancy legal word that means you have to pay your health insurance company back when you receive a settlement from the negligent hospital or doctor. How much depends on the type of health insurance you buy and the source of your recovery.

If you receive government benefits like Medicaid or Medicare, then Medicaid and Medicare have what we call a “super lien” on the settlement. These liens typically apply to all sources of recovery, whether you receive money from the at fault driver or from your insurance (like UM/UIM or PIP). We deal with Medicare and Medicaid and are generally able to negotiate a discount.

If you have a health insurance policy that is governed by the federal law known as ERISA (large employers sometimes have ERISA plans), then the health insurance company has a lot more rights to assert a lien on your settlement. One thing that we are able to ascertain is whether the health insurance plan is a “self-funded ERISA plan”. If it is not, then the plan would be subject to our Texas state laws which allow for a discount.

One of my most important jobs as a personal injury lawyer is to negotiate with hospitals and health insurance companies and Medicaid and Medicare when a settlement has been proposed. I negotiate using the law on my side. It is absolutely crucial that your attorney knows how to deal with subrogation and liens in order to maximize the amount of money they put in the client's pocket at the end of the day. That is why I have studied these laws and even written a legal article on the topic.

Call us at (915) 229-2222 if you have any additional questions about your medical malpractice claim. We would love to hear from you, and your question may also help us improve future versions of this guide!

How It Works

Here are the steps you can take to pursue your medical malpractice case.

1. Contact Our Law Firm

You made the right decision by downloading this guide and learning more about the medical malpractice laws in Texas and New Mexico. The next step for you to take is to contact our law firm for a free case evaluation. The best way to do that is to fill out our **online form** and tell us all about your injuries and complaints. You can also call one of our medical malpractice intake specialists at (915) 229-2222 and tell them about your case. Because of the large volume of calls we receive, we rely on our intake forms and intake specialists to initially screen potential cases.

Once we determine that you meet our case selection criteria through the screening process, we will set an in-person meeting to talk with one of our medical malpractice lawyers to discuss your case. If we determine that we want to pursue your case, we will enter into a contingent fee agreement which gives us authority to further investigate your case.

After hiring our firm, we will gather up your pertinent medical records. Then, we will work with one or more of our qualified medical professional affiliates to do a more thorough evaluation of your claim. Once our experts agree with us that your case has merit, we will start the claims and lawsuit process by notifying the negligent healthcare provider of your claim. We will comply with the pre-suit notice and other prerequisites to filing a lawsuit for you based on the laws of the state where the malpractice took place.

2. Filing of a Lawsuit and Taking the Case to Trial If Necessary

Most medical malpractice cases cannot be settled without filing a lawsuit. So, in most instances, we will promptly file a lawsuit on your behalf after our initial evaluation. The process of filing a lawsuit is an intensive and time-consuming process. It can take more 2 or more years and often longer to finish the lawsuit process. These are the steps that will happen in your lawsuit:

- **The lawsuit is filed** and the defendant(s) have to respond.
- **The parties to the lawsuit exchange written discovery** like written questions called interrogatories and requests for production of relevant documents. During this phase, you will have to meet with your lawyer and staff to answer questions and supply documents to the other side.
- **Depositions take place.** This is where you will have to go to a court reporter's office and give testimony under oath to the other lawyer. We will have the same opportunity to depose the defendant healthcare professional, any witnesses and your medical providers. Both sides will hire experts to prosecute and defend the case. Extensive expert discovery will take place.
- **Mediation occurs** after the above discovery takes place. Mediation is a court ordered settlement conference. A neutral person, called a mediator, will help both sides to attempt to settle the case before going to trial. The mediator chosen is an experienced lawyer or former judge that has extensive experience with personal injury lawsuits. This process is non-binding and confidential. Most but not all cases that are in the lawsuit phase settle at mediation.
- **Trial takes place** if the parties are not able to settle the case. The trial will be in front of a jury and both sides will try to win the case to their benefit. A jury of 12 people will decide the issues of who is at fault and how much money to award for damages and injuries.
- **Appeal.** If there are significant legal issues in the case, you might have to have the case appealed to a higher court. This is a rare occurrence, but it can happen if there was some error or irregularity in the trial that need to be ruled by a higher court.

We hope we have helped answer some of the questions you may have. Want to meet with us to discuss your case and how this process could help you reach a successful resolution? *Call us at (915) 229-2222* to arrange a free consultation.

The End Result

Below you will find testimonials of people who have gone through the process you just learned about. As you will discover, it doesn't have to be difficult, and help is available to you. Please keep in mind that past results do not guarantee future success and the results obtained for every case depend on the facts of that case.

"Clark has represented me on two separate occasions and both times I've come out with a smile on my face. He and his staff are very professional yet friendly and courteous. They answer all your questions and will respond to you quickly. I felt comfortable and never uneasy like some people do when they speak with attorneys. I recommend him to all my coworkers who may need representation and if the need ever arises again you can bet your bottom dollar I'll be calling Clark once again."

-Mario

"I was so grateful and amazed with the service and treatment I received from this law firm and staff. Mr. Harmonson takes the time to speak to you and explains everything you need to know in detail. I appreciate the fact that Mr. Harmonson will go out of his way to speak to you and answer any questions as well as return any phone calls promptly. I would receive updates on my case and his assistant Rosie was a doll. Everyone is very polite and very professional, I will definitely recommend Harmonson Law firm to anyone in need of a professional honest attorney."

-Joanne

was recently represented by both Clark Harmonson and Hadley Huchton and I was very impressed with their attentiveness and work put into the case. I am very pleased with the outcome and will definitely use them for any future needs!

-Michelle

Our team at Harmonson Law Firm is standing by to help you. As a matter of fact, we look forward to your call and the chance to serve you as we have served others in our community. While we certainly can't guarantee any results, we may be the right law firm for you. ***The best way for us to find out is by filling out our online form or calling us at (915) 229-2222*** to start the process.

