

*Measure Would Enable Family of Sgt. Carmelo Rodriguez & Others to Hold Military Accountable for Negligent Medical Care*

Washington, DC - The House Judiciary Subcommittee on Commercial and Administrative Law today approved a bill that Congressman Maurice Hinchey (D-NY) authored, which would enable armed service members and their families to hold the military accountable for negligent medical care. Current law prevents any such malpractice lawsuits from being filed against the military regardless of the egregiousness of the situation. Hinchey's bill, the Carmelo Rodriguez Military Medical Accountability Act of 2009, is named after the late Sgt. Carmelo Rodriguez of Ellenville, New York, who died of skin cancer in 2007 after a series of extraordinary mistakes made by military medical personnel.

"Congress took an important step forward today toward lifting an unfair policy that has denied members of the military and their families any recourse when they are the victim of medical negligence," Hinchey said. "For far too long this country has denied its servicemen and women, the very people who risk their lives to protect our freedom, some of the most basic legal rights afforded to every other American, including prisoners. This legislation provides members of the military and their families with a way of holding their medical providers accountable for negligent care. They will no longer have nowhere to turn should something terrible happen."

The full House Judiciary Committee is expected to take up the bill before the end of July. Earlier this year, the subcommittee held a legislative hearing on the bill. Hinchey testified before the subcommittee on the merits of the bill as did Sgt. Rodriguez's sister, Ivette, who highlighted the impact the tragedy has had on her family. The congressman first introduced the bill last year, and he reintroduced the measure in the current session of Congress in March.

Rodriguez, a Marine who served in Iraq, died in 2007 at the age of 29. Upon enrolling in the military in 1997, Rodriguez received an initial medical exam that revealed melanoma on his buttocks. The doctor making the diagnosis, however, failed to tell Rodriguez or refer him to a specialist. While serving in Iraq in 2005, Rodriguez was bothered by the area on his buttocks, which was constantly bleeding. A different military doctor repeatedly misdiagnosed the skin cancer as a birthmark or wart.

As the skin cancer worsened, Rodriguez's family was unable to receive a copy of his medical

records from the Marines to give to other doctors. The family then asked Hinchey's office for help, but by the time the congressman's office received the medical records from the Marines it was too late. Carmelo Rodriguez had three surgeries and received radiation and chemotherapy, but it didn't save his life. The cancer had spread throughout his body and weakened him to the point that he went from being an athletic 190 pound man to weighing less than 80 pounds. He left behind a loving family, including a son who was seven years-old at the time.

Hinchey's bill would legislatively reverse the U.S. Supreme Court's 1950 ruling in *Feres vs. United States* in which the court ruled that military members and their families have no right or ability to sue the military for negligent medical care given to them during their service. The ruling, which has subsequently been referred to as the *Feres Doctrine*, has left families such as the Rodriguez's with no recourse for addressing the loss of a loved one due to obvious medical malpractice by military doctors and other medical personnel.