

Measure Congressman Authored Would Enable Family of Sgt. Carmelo Rodriguez & Others To Hold Military Accountable For Negligent Medical Care

Washington, DC - Continuing his effort to reverse current law and permit armed service members and their families to hold the military accountable for negligent health care, Congressman Maurice Hinchey (D-NY) today urged the chairman of the House Armed Services Committee and the House Judiciary Committee to hold hearings on a bill he's drafted and the underlying law in question. In order to provide servicemen and women with the rights to hold the military accountable for medical malpractice, Hinchey last month introduced the Carmelo Rodriguez Military Medical Accountability Act of 2008. The bill is named after the late Sgt. Carmelo Rodriguez of Ellenville, New York, who died of skin cancer last year after a series of extraordinary mistakes made by military medical personnel.

"Under the Federal Tort Claims Act, federal prisoners and even illegal aliens in the United States have the ability to seek damages from the federal government for medical malpractice, but members of our nation's military still do not," Hinchey wrote in letters to House Armed Services Committee Ike Skelton (D-MO) and House Judiciary Committee Chairman John Conyers (D-MI) urging them to hold hearings on the matter. "While I believe it is time for the Congress to put our military personnel on equal footing with all Americans, I understand that some consider this to be a controversial proposal. In my view, it is the responsibility of Congress to aggressively examine this issue out of respect to the sacrifices our servicemen and women have made in order to serve our country. Those sacrifices and service surely merit Congress taking the time to hold a discussion of the circumstances that face the men and women of the armed forces."

Hinchey's bill would legislatively reverse the U.S. Supreme Court's 1950 ruling in *Feres vs. United States* in which the court said 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 family with no recourse for addressing the loss of a loved one due to obvious medical malpractice by military doctors and other medical personnel. In his letters to Skelton and Conyers, Hinchey urged the chairmen to examine both the U.S. Supreme Court ruling and his bill.

Rodriguez, a Marine who served in Iraq, died last year 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 pussing and 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, received radiation and chemotherapy, but it didn't save his life. The cancer had spread throughout Rodriguez's 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 seven year old son.

###

The text of Hinchey's letter to Skelton and Conyers follows:

June 5, 2008

Chairman Ike Skelton

Chairman John Conyers

House Armed Services Committee

House Committee on the Judiciary

2120 Rayburn House Office

2138 Rayburn House Office Building

Washington, DC 20515-6035

Washington, DC 20515-6216

Chairman Skelton and Chairman Conyers:

On behalf of our nation's military personnel, veterans, their families, and all Americans, I am requesting that the House Armed Services Committee hold a hearing with regard to the Feres Doctrine.

As you know, the Feres Doctrine was a ruling by the U.S. Supreme Court nearly 60 years ago that denies servicemen and women the ability to hold the military accountable for acts of negligence, including medical malpractice. Under the Federal Tort Claims Act, federal prisoners and even illegal aliens in the United States have the ability to seek damages from the federal government for medical malpractice, but members of our nation's military still do not.

To address this injustice, I have introduced the Carmelo Rodriguez Military Medical Accountability Act, H.R. 6093. The bill is named after Sgt. Carmelo Rodriguez, a decorated Marine and platoon leader in Iraq, who died of skin cancer last year after a series of extraordinary mistakes and misdiagnoses made by military medical personnel.

Americans across the country are outraged by this and many are demanding Congress to act. While I believe it is time for the Congress to put our military personnel on equal footing with all Americans, I understand that some consider this to be a controversial proposal. In my view, it is the responsibility of Congress to aggressively examine this issue out of respect to the sacrifices our servicemen and women have made in order to serve our country. Those sacrifices and service surely merit Congress taking the time to hold a discussion of the circumstances that face the men and women of the armed forces.

I thank you for your strong leadership on the Armed Services Committee and respectfully request that a full committee hearing be held in order for Congress to examine the Feres Doctrine, which so deeply affects our nation's military personnel.

Sincerely,

Maurice D. Hinchey