

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

Wurtsboro, NY - Seeking to reverse an injustice that prevents armed service members and their families from holding the military accountable for negligent health care, Congressman Maurice Hinchey (D-NY) today unveiled legislation he's authored that would permit medical malpractice claims against the military. Hinchey's bill, the Carmelo Rodriguez Military Medical Accountability Act of 2008, 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. The congressman intends to formally introduce the legislation in the House tomorrow.

"The death of Carmelo Rodriguez is an extraordinary tragedy that has left his family with nowhere to turn," Hinchey said. "As the result of a misguided law and subsequent U.S. Supreme Court ruling, the Rodriguez family and many other military families in similar situations have no way of holding the military responsible for the negligence of military medical personnel. Joining the military should not mean that one has to give up his or her right to hold medical providers accountable. The Carmelo Rodriguez Military Medical Accountability Act of 2008 will finally bring accountability into the military medical system and afford our service members and their families the same rights that the rest of us have when it comes to medical malpractice."

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.

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's with no recourse for addressing the loss of a loved one due to obvious medical malpractice by military doctors and other medical personnel.

"Carmelo's situation and this legislation speak directly to the fact that our military, including the military's health care system, is spread far too thin by the occupation of Iraq," Hinchey said. "Our military is facing shortfalls of doctors, nurses, and other health care staff across the board. Additionally, it is incumbent upon the military to ensure that it has doctors who know how to diagnose non-combat injuries and diseases such as skin cancer rather than just having doctors who are trained to treat combat wounds. In addition to providing the Rodriguez family and other military families with a way to hold the military accountable for the wrongful death and injuries of loved ones, this bill helps encourage the military to take the steps needed to improve its care so that no one else ever has to go through what the Rodriguez's have endured."

Hinchey's bill has the support of Congressman Barney Frank (D-MA) who has previously introduced a similar measure. This week, the congressman plans to begin collecting cosponsors for his legislation and is also working to find a Senate sponsor.