



Medical Litigation and the Care of Newborns

Dong yup Lee, MD, MPH

Pyeongchang Health Center & County Hospital

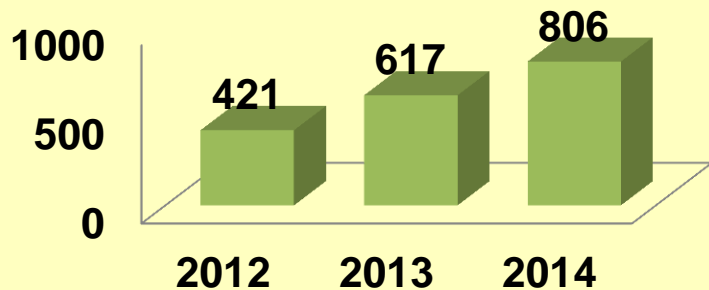
E-mail: ped83dylee@gmail.com





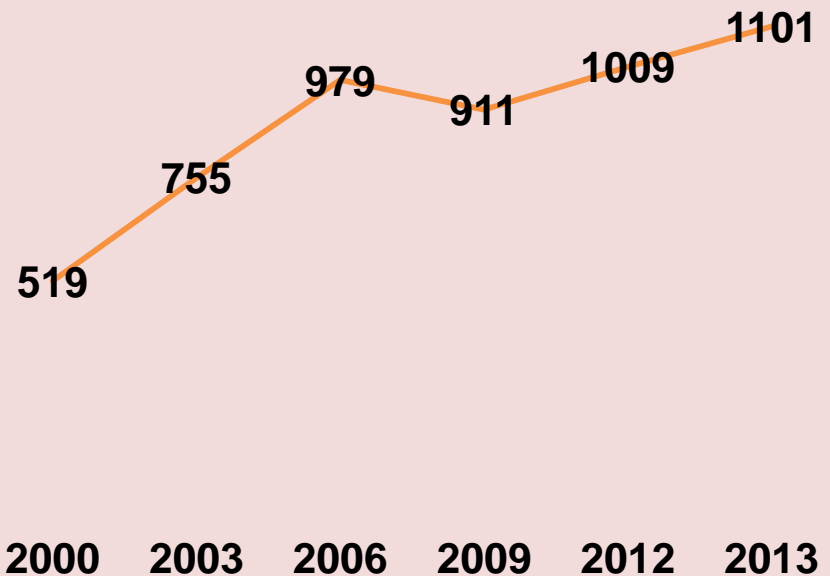
Increasing medical disputes

❖ Cases of Medial Disputes

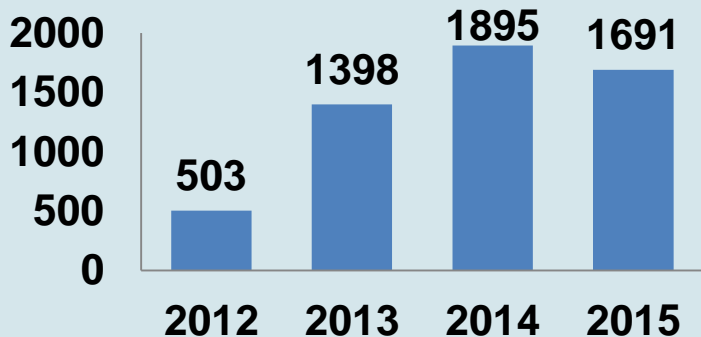


Data from the Korea Consumer Agency

❖ Cases of Medial Litigation



Data from the Judicial Yearbook



Data from the Korea Medical Dispute Mediation and Arbitration Agency



Process of medical disputes



Medical service use ↑



Medical accidents ↑



Medical disputes ↑



Medical litigation



한국의료분쟁조정중재원
Korea Medical Dispute Mediation and Arbitration Agency

Disputes mediation organization



Mutual agreement

Effect of increased medical litigation

If medical litigation ↑



Defensive medicine ↑



Excessive diagnostic test and treatment



Health care costs ↑



Patient's financial burden ↑

Avoiding a department with frequent medical disputes



Shortage of medical professionals in particular department



Medical approachability ↓



Negative impacts on patients



Purpose of study

❖ Newborn?

- The first 4 weeks after birth
- Many physiological changes occur
- Very vulnerable and unstable
- 2/3 of infants death here



❖ High risk pregnancy ↑

➔ **Potential risk factor** for medical accidents

- Preterm birth
- Low birth weight baby
- Chromosomal anomaly
- Congenital malformation



If this trend continues?

➔ Medical disputes will increase

❖ Purpose of this study?

through the **analysis of precedents in neonatal area**

- To identify the causes and characteristics of medical litigation
- To propose measures in order to reduce medical malpractice



Definition of terms

Medical accidents

- **Unexpected results** in medical act
- A value neutral term

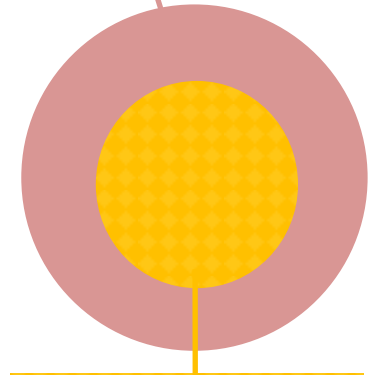
Medical malpractice

- Medical accident caused by **negligence of doctors**
- A legal term

Medical disputes

- **Conflicts** between **doctors** and **patients** due to **medical accident**

Medical accidents



Medical malpractice

❖ Duty of care

- Obligation of the medical personnel to make efforts to prevent patients' physical or mental harm
1. To recognize the outcome in advance
 2. To take action for avoiding a bad outcome

❖ Duty of explanation

- Obligation to explain all the means of treatment, the risks, diagnosis and prognosis
- To satisfy the patient's right to know



Variables

**28 cases of precedents
2005-2009, for 5 years**

01 Duration of the
medical litigation

Interval from the
time of the
incident to the end
of the litigation

02 Birth weight and
gestational age

03 Final court result

1.Plaintiffs win
(including partial
win)
2.Plaintiffs lost
3.Reconciliation

04 Outcome of
medical accident

1.Death
2.Disability
3.Recovery

05 Types of
violation of duty

1.Violation of
the duty of care
2.Violation of
the duty of
explanation

06 Amount of
compensation
for damage

07 Disease
classification

Categorized
based on the
main symptoms

Results

❖ Duration of the medical litigation?

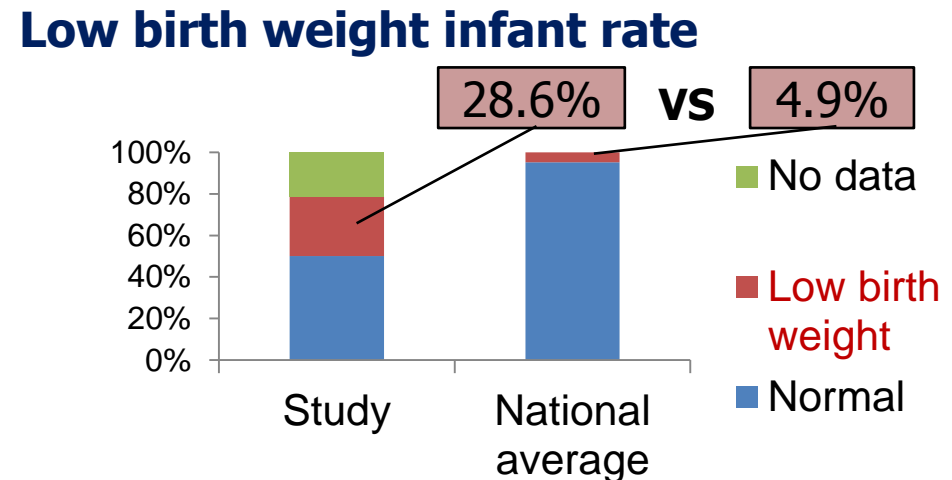
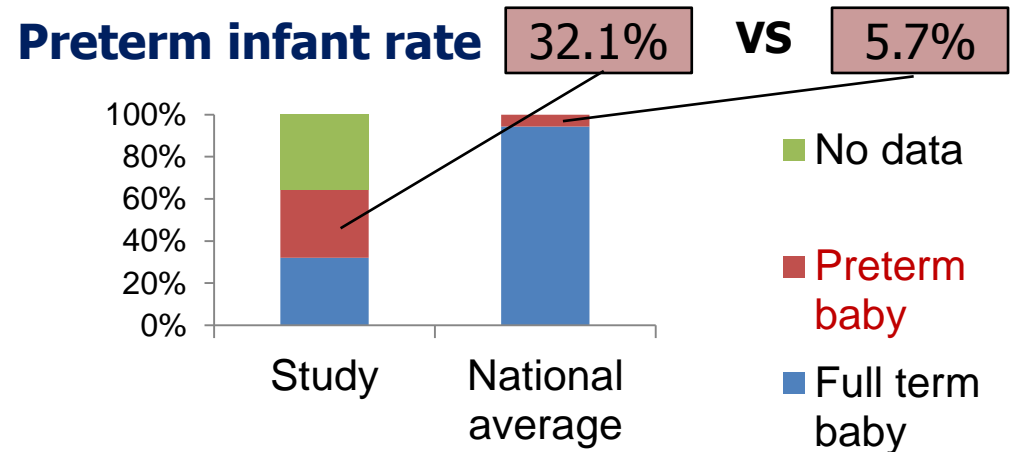
4.4 year

❖ Gestational age

- Average gestational age
- All newborn in study **35.3weeks**
- Preterm baby in study (9 cases) **31.9weeks**

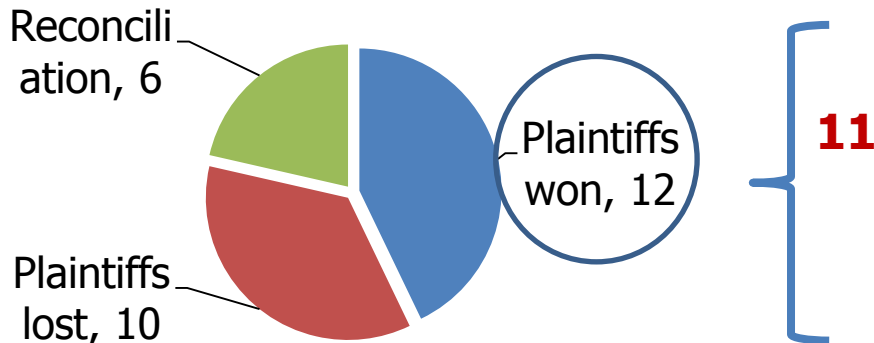
❖ Birth weight

- Average birth weight
- All newborn in study **2.7kg**
- Low birth weight baby in study (8 cases) **1.6kg**



Results

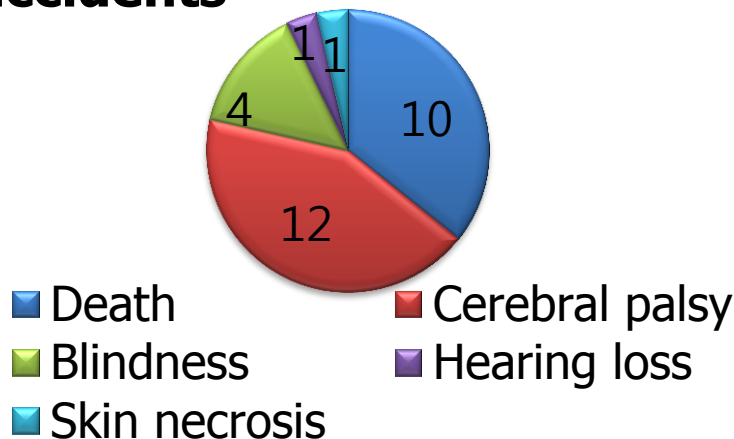
❖ Final court results



❖ Types of violation of duty

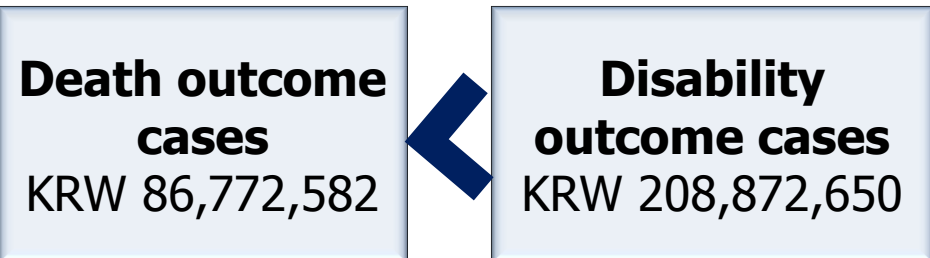
- 10** Violation of the duty of care
- 1** Violation of the duty of care and explanation
- 1** Violation of the duty of explanation

❖ Outcomes of medical accidents



❖ Amount of compensation for damage

KRW161,389,291 = \$136,000





Results

Total 28cases

❖ Gastrointestinal diseases

6cases(21.4%)

❖ Pulmonary diseases

4cases(14.3%)

❖ Ophthalmic diseases

4cases(14.3%)

❖ Otorhinolaryngologic diseases

1cases(3.6%)

❖ Neurological diseases

5cases(17.9%)

❖ Aspiration accidents

5cases(17.9%)

❖ Infectious diseases

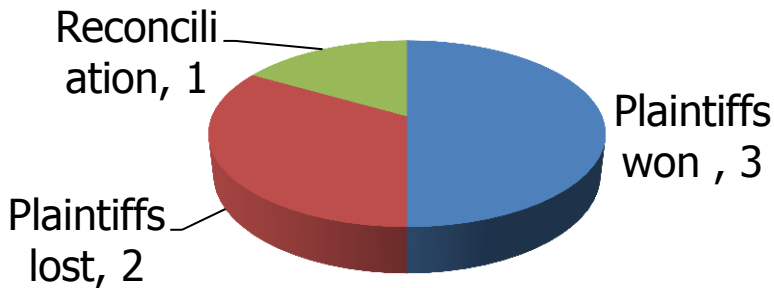
2cases(7.1%)

❖ Drug associated accident

1cases(3.6%)



Group1 Gastrointestinal diseases



From 2005 to 2009, among 28 cases

❖ Features

- No Symptom or mild symptoms
- Weight, intake, excretion and basic vital signs must be measured
- Warning sign : weight loss beyond the degree of postnatal physiological weight loss (less than 10%)

❖ Total 6 cases

- Necrotizing enterocolitis (4 cases)
- Severe dehydration due to diarrhea, vomiting and bloody stool (2 cases)

❖ Real case

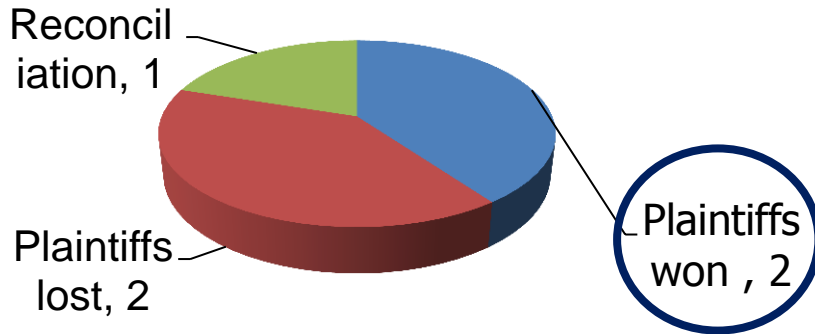
- IUP 36weeks, 2.9kg, 7th day
- Due to diarrhea, bloody stool

- Vital signs, weight and I/O not checked
- After 2days, symptoms got worse

- Transferred to a university hospital
- Died of sepsis, 2.34kg
- 0.56kg(19.3%) weight loss



Group2 Neurological diseases



From 2005 to 2009, among 28 cases

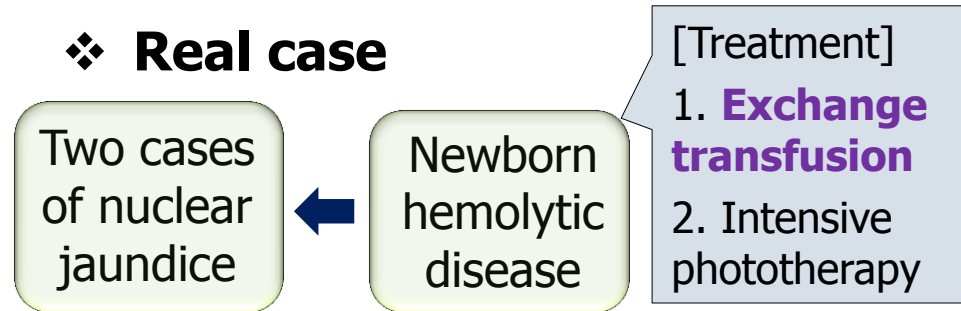
❖ Features

- Standard of judgment?
- **Whether doctors made efforts** to control convulsions and prevent it from recurring
- It should be considered to transfer patients if facilities are not adequate for the best treatment

❖ Total 5cases

- Hypoxic ischemic brain injury, Convulsion (3cases)
- Nuclear jaundice due to hemolytic disease of newborns(2cases)

❖ Real case

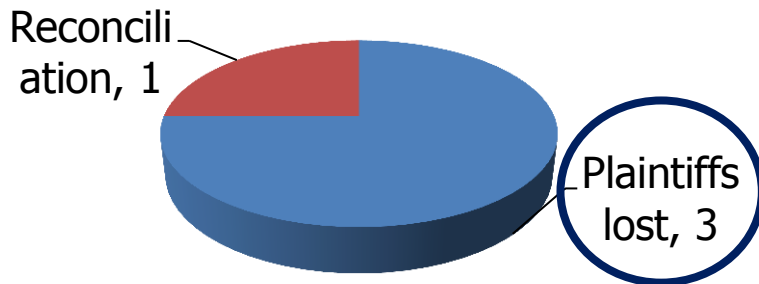


- Total bilirubin levels ↑↑
 - Case 1: 19mg/dl at 1st day
 - Case 2: 61mg/dl at 3rd day

↓
Patients were not transferred immediately
↓
Exchange transfusion timing was delayed



Group3 Pulmonary diseases



From 2005 to 2009, among 28 cases

❖ Total 4cases

- Hyaline membrane disease(2cases)
- Pneumothorax (1case)
- Meconium aspiration(1case)

❖ Features

- No case plaintiffs won
- Respiratory distress symptoms were aggravated shortly after birth or within hours

Patient factors

- Disease severity
- Immaturity of newborn lung
- Weight, age

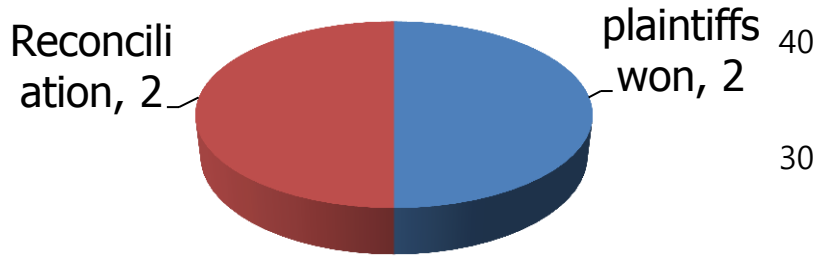


Other factors

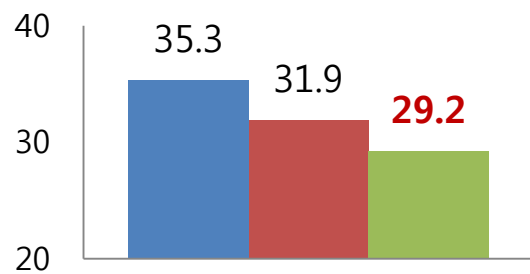
- Treatment methods (medicine, nutrition etc.)
- Treatment equipments
- Doctor's decision making



Group4 Ophthalmic diseases

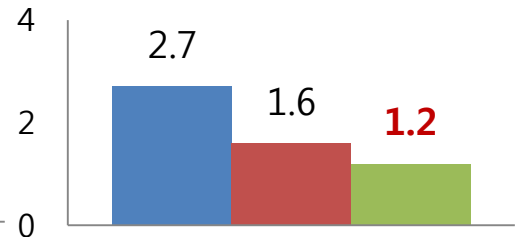


From 2005 to 2009, among 28 cases



Gestational age(weeks)

- All cases
- preterm cases
- ophthalmic cases



Birth weight(kg)

- All cases
- preterm cases
- ophthalmic cases

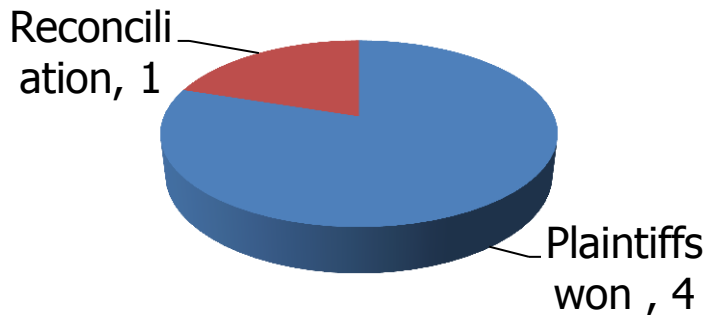
❖ Total 4 cases

- Retinopathy of prematurity(ROP)

Risk factor	Controllability	How to deal with ROP
Gestational age↓ Birth weight ↓ → Immaturity of retina	Uncontrollable	Check up regularly to see if it is going to ROP
Long term, high density oxygen therapy	Controllable	Use only as little as oxygen needs



Group5 Aspiration accidents



From 2005 to 2009, among 28 cases

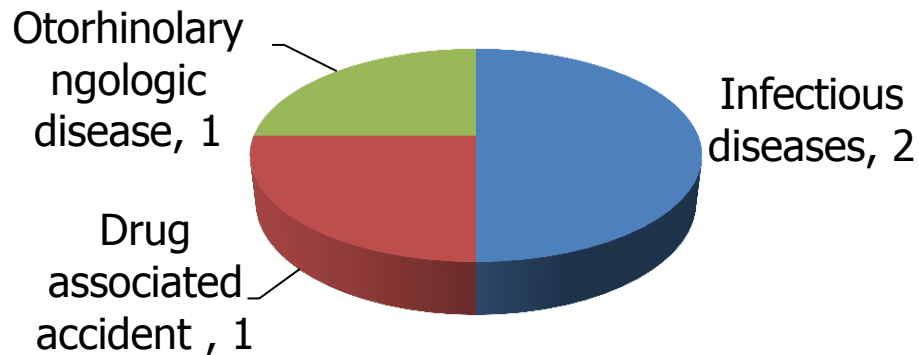
❖ Total 5 cases

- Invasive procedure immediately after feeding (3cases)
- Insufficient belching (2cases)

❖ Features

- Aspiration of stomach contents by vomiting or reflux
- Regurgitation easily happen in neonate
- ➡ **Belch** after feeding
- ➡ **Avoid invasive procedure** after feeding
- **Check the last feeding time** before procedure
- ➡ To ensure enough time has passed for the stomach contents to be emptied.

Others



From 2005 to 2009, among 28 cases

**Infectious diseases
(2cases)
1 plaintiffs won
1 plaintiffs lost**

- Meningitis, sepsis by Group B streptococcus infection
- Myocarditis, encephalitis by enterovirus infection

**Drug associated
accident (1case)
plaintiffs lost**

- Skin necrosis due to extravasation of calcium

**Otorhinolaryngologic
disease (1case)
plaintiffs lost**

- Sensory hearing loss after use ototoxic antibiotics

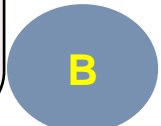


The yardstick of judgment



Option A, B

Reasonable choices based on current medical standard of care



Nobody can blame a doctor why he didn't choose treatment A

Bad results

Option

Outcome

Process

Judgment

B

Unwanted Results

Reasonable choice

Medical accident. Responsibility (X)

C

Unreasonable choice

Medical malpractice. Responsibility (O)

Option	Outcome	Process	Judgment
B	Unwanted Results	Reasonable choice	Medical accident. Responsibility (X)
C		Unreasonable choice	Medical malpractice. Responsibility (O)



Limitations

01

- ❖ **Impossible to analyze the contents not in the written judgment**

02

- ❖ **Decisions from a non-specialist in the medical field**
- ❖ **Only for the part requested by the patient**
 - **Possible to miss important clues**

03

- ❖ **Frequent cases in medical litigation**
 - **Not represent cases in real medical field**



Take home message

01

- ❖ **To prevent medical malpractice**
- **Fulfill duty of care and explanation**

02

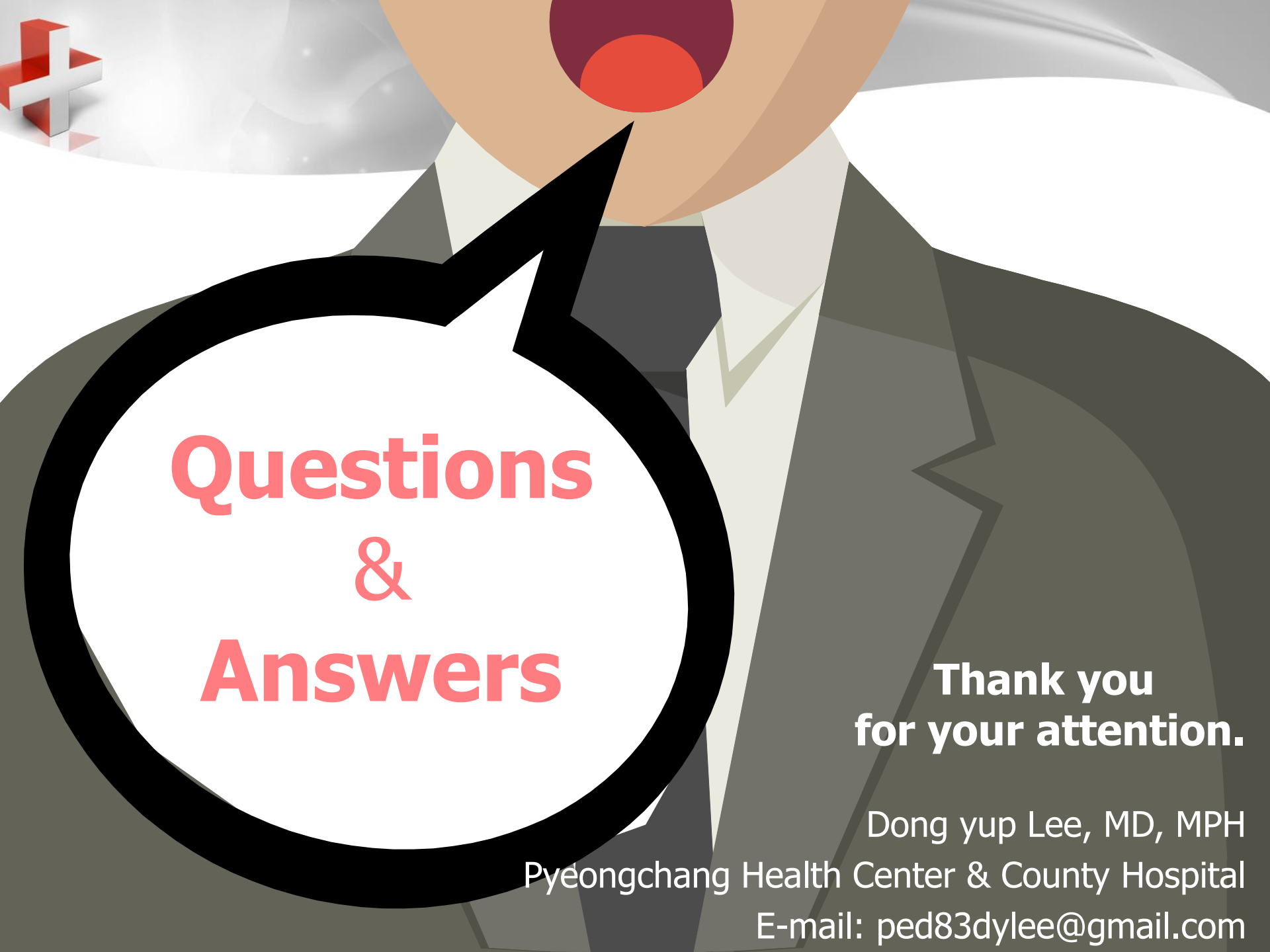
- ❖ **Inadequate facilities for treatment**
- **Consider transfer patients to a higher level hospital**

03

- ❖ **Uncontrollable diseases**
- **Regularly check patients to detect worsening of diseases**

04

- ❖ **Treatment in accordance with the clinical practice guidelines**
- **Best way to protect patients and defend doctors themselves from medical accidents**



**Questions
&
Answers**

**Thank you
for your attention.**

Dong yup Lee, MD, MPH
Pyeongchang Health Center & County Hospital
E-mail: ped83dylee@gmail.com