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Orthodontic Treatment by General Dentists and Orthodontic Specialists: Facts and Law as Torts for Latent Harm

การจัดฟันโดยทันตแพทย์ทั่วไปและทันตแพทย์เฉพาะทาง : ข้อเท็จจริงและข้อกฎหมายกรณีละเมิดที่ก่อให้เกิดความเสียหายซ่อนเร้น

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Abstract

This article examines the factual and legal issues from torts related to orthodontic treatment by general dentists lacking specialized expertise. It addresses latent harm, where damages are not immediately apparent. Such issues are prevalent in many countries, including the United States and Australia, where general dentists perform orthodontics. The article analyzes the complexities in proving and claiming damages, correcting misconceptions of harmed individuals who believe they cannot hold general dentists accountable, as seen in Thai public Q&A forums. Written from an attorney's perspective, the study uses personal medical data as case studies. Data were collected through reviews of legal documents and dental research articles from Thai and international sources. The study references dental guidelines in Thailand compared to

other countries and specific case examples of damages from fixed orthodontic appliances. The findings reveal significant gaps that impact patients, using dental research findings to explain damages and liabilities in orthodontics. This article aims to benefit countries that still allow general dentists without specialized training according to international standards to perform orthodontics and to provide legal guidelines for individual case applications.

Keywords: Orthodontics, Orthodontics by General Dentists, Orthodontics by Orthodontic Specialists, Damages from Orthodontic Treatment

บทคัดย่อ

บทความนี้ศึกษาข้อเท็จจริงและข้อกฎหมาย ที่เกิดจากการละเมิดอันเกี่ยวข้องกับการรักษาทางทันตกรรมจัดฟันที่ดำเนินการโดยทันตแพทย์ทั่วไปที่ขาดความเชี่ยวชาญเฉพาะทาง โดยมุ่งเน้นที่ความเสียหายแฝงเร้นซึ่งไม่ปรากฏให้เห็นทันที ปัญหาดังกล่าวพบได้บ่อยในหลายประเทศที่อนุญาตให้ทันตแพทย์ทั่วไปทำการจัดฟัน แม้แต่ในสหรัฐอเมริกาและออสเตรเลีย บทความนี้วิเคราะห์ความซับซ้อนในการพิสูจน์และเรียกร้องค่าสินไหมทดแทน รวมถึงการแก้ไขความเข้าใจผิดของผู้ที่ได้รับความเสียหายที่เชื่อว่าตนไม่สามารถเรียกร้องความรับผิดชอบจากทันตแพทย์ทั่วไปได้ ซึ่งพบเห็นได้จากกระทู้ ถาม-ตอบสาธารณะในประเทศไทย การศึกษานี้เขียนขึ้นจากมุมมองของทนายความที่ค้นพบว่าตนเองก็เป็นเหยื่อของการรักษาทางทันตกรรมจัดฟันที่ไม่ได้มาตรฐานจากทันตแพทย์ทั่วไป โดยได้นำรายละเอียดประสบการณ์ตรงของผู้เขียนมาใช้เป็นกรณีศึกษา เพื่อสนับสนุนการวิเคราะห์ ทั้งนี้ข้อมูลต่าง ๆ ได้ถูกรวบรวมผ่านการทบทวนเอกสารทางกฎหมาย บทความ และงานวิจัยทางทันตกรรมจัดฟัน ทั้งในไทยและต่างประเทศ รวมถึงได้อ้างอิงแนวทางขององค์กรทางทันตกรรมในประเทศไทยเปรียบเทียบกับประเทศอื่น ๆ เฉพาะกรณีความเสียหายจากอุปกรณ์จัดฟันแบบยึดติดแน่น การศึกษานี้พบช่องว่างที่มีผลกระทบต่อผู้เสียหายอย่างมีนัยสำคัญ โดยใช้ผลวิจัยทางทันตกรรมเพื่ออธิบายความเสียหาย และความรับผิดทางทันตกรรมจัดฟัน บทความนี้มุ่งหวังที่จะให้เป็นประโยชน์ต่อประเทศที่ยังคงอนุญาตให้ทันตแพทย์ทั่วไปที่ขาดการฝึกอบรมเฉพาะทางตามมาตรฐานสากลมาทำการจัดฟันได้ และเพื่อเป็นแนวทางปฏิบัติด้านกฎหมายสำหรับการนำมาปรับใช้ในกรณีของแต่ละบุคคล

คำสำคัญ : การจัดฟัน การจัดฟันโดยทันตแพทย์ทั่วไป การจัดฟันโดยผู้เชี่ยวชาญด้านทันตกรรมจัดฟัน ความเสียหายจากการจัดฟัน

Chapter 1: Introduction

1.1 Background and Importance of the Problem

Orthodontics is a complex process requiring specialized expertise, involving tooth movement, occlusion adjustment, and dentofacial orthopedics.[1] Providing orthodontic services by general dentists without specialized training can lead to inadequate outcomes according to modern academic standards.[2] For example, the United States, which has one of the most advanced orthodontic fields globally, established the first orthodontic school and the first orthodontic association in the world as early as 1859[3] However, issues related to general dentists performing orthodontic treatments still persist, prompting the American Association of Orthodontists (AAO) to issue clarifications to address these ongoing concerns.[4]

This study aims to propose guidelines for defining the damages caused by orthodontic treatment, gathering evidence, filing lawsuits, and improving laws and regulations related to orthodontics in Thailand. The goal is to ensure that patients receive high-quality and safe treatments and to foster a comprehensive understanding among legal professionals, relevant organizations, and orthodontic patients at an international level.

1.2 Objectives of the Study

1.2.1 To analyze and compare the issues, regulations, practices, and laws related to orthodontic treatment by general dentists in Thailand with those in the

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[1] American Association of Orthodontists, 'Decoding Orthodontic Jargon: A Comprehensive Glossary' (October 2022) 20 <https://aaoinfo.org/resources/glossary-of-orthodontic-terms/> accessed 1 March 2024.

[2] American Association of Orthodontists, 'Unveiling Truths: Busting Common Orthodontic Myths' (1 October 2017) 1 <https://aaoinfo.org/whats-trending/7-myths-about-orthodontic-treatment/> accessed 1 March 2024.

[3] American Dental Association, 'History of the ADA' <https://www.ada.org/about/history-of-the-ada> accessed 1 March 2024.

[4] American Association of Orthodontists, 'Dentist and Orthodontist: Spot the Difference' (4 September 2018) <https://aaoinfo.org/resources/orthodontist-vs-dentist/> accessed 1 March 2024.

United States and Australia, aiming to explore potential adaptations for Thailand. This will serve as a case study for countries facing similar issues.

1.2.2 To raise awareness of the legal loopholes related to orthodontic treatment and the importance of public awareness, which has been obscured by dental organizations in Thailand. This affects the recognition of damages caused by substandard orthodontic treatment and the public's understanding of these damages, creating a cyclical effect involving various organizations such as legal entities.

1.2.3 To propose guidelines for explaining the damages caused by orthodontic treatment in a way that meets international standards, making it known to the public. This includes adapting methods for claiming responsibility, particularly in tort law or civil damage claims, which have similar legal provisions in almost every country. Additionally, to propose the addition of necessary and enforceable provisions to protect patients from orthodontic treatment by general dentists who lack specialized expertise in the future, based on issues identified in Thailand, the United States, and Australia as examples.

1.3 Scope and Methodology of the Study

This study encompasses a comparative analysis of issues, policies, regulations, practices, and laws related to orthodontic treatment in **Thailand** and other countries. It was found that 21 countries in the **APEC group** face nearly identical issues, and in some countries, the public is almost unaware they are victims of substandard orthodontic treatment. Thailand is one of these countries, despite having one of the strongest public health systems in the world. Due to the limited number of pages, this article compares only Thailand, the United States, and Australia, representing an Asian country and Western countries. The research methodology includes documentary research and case study analysis, involving data collection from academic journals, legal regulations, and international research reports.

1.4 Definition of General Dentist in Orthodontic Context

In this article, the term **"general dentist"** refers to a dentist who has completed a Bachelor's degree in Dentistry (Doctor of Dental Surgery, DDS, or equivalent) and holds a valid dental license to practice general dentistry. General dentists provide a wide range of dental care but lack the specialized training and certification required for orthodontic treatment as recognized by international standards. Such certification must be formally accredited by the primary regulatory organization in each country to ensure full recognition as a certified orthodontic specialist.

This definition also includes general dentists who have undergone short-term training courses in orthodontics, ranging from one-day workshops to part-time programs lasting up to two years. Such training, while enhancing basic knowledge, does not equate to the rigorous full-time postgraduate education required for orthodontic specialists, which involves at least 2–3 years of intensive training, clinical practice, and examinations.

In the context of this study, the distinction between general dentists and orthodontic specialists is critical to understanding the legal, ethical, and professional implications of providing orthodontic services. This differentiation helps clarify the risks and responsibilities associated with orthodontic treatment performed by individuals without comprehensive specialized training.

Chapter 2: Theories and Principles of Orthodontics

2.1 Introduction

Orthodontics is a dental treatment method aimed at correcting tooth alignment and malocclusion. Orthodontic treatment is important for both oral health and the aesthetic appearance of a smile. Proper orthodontic treatment helps prevent dental caries, gum recession, and poor occlusion,[5] which can lead to other health problems affecting quality of life, confidence, and self-esteem. Because orthodontics impacts

[5] William R Proffit, Henry W Fields, and DM Sarver, *Contemporary Orthodontics* (5th edn, Elsevier Mosby 2012).

appearance, facial structure, and smile, orthodontic treatment for aesthetic reasons is highly significant.[6]

2.2 Theories and Principles of Malocclusion and Orthodontics

Malocclusion can be classified into three main categories based on complexity: Class I, Class II, and Class III.[7] The primary objective of orthodontic treatment is to correct these malocclusions. The fundamental theory of orthodontics involves tooth movement, which is associated with biological processes in the bone and periodontal ligament. Orthodontic treatment relies on maintaining balanced forces and controlling tooth movement accurately,[8] influenced by bone resorption and deposition caused by mechanical forces.[9] Orthodontists globally depend on these biological processes for tooth movement through the bone[10] Additionally, new theories and innovations play a significant role in improving treatment, including technological advancements such as non-coding RNAs, AI, and other modern technologies currently applied in orthodontics.[11]

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[6] William Alves de Oliveira, 'Quality of Life, Facial Appearance and Self-Esteem in Patients with Orthodontic Treatment' (2017) 5(3) Revista Mexicana de Ortodoncia,e134, e134-e135 <https://doi.org/10.1016/j.rmo.2017.12.007> accessed 16 June 2024.

[7] American Orthodontic Society, 'Identifying and Treating Malocclusions Classes I, II, and III' (2022) <https://orthodontics.com/identifying-and-treating-malocclusions-classes/> accessed 20 March 2024.

[8] Yi Li and others, 'Orthodontic Tooth Movement: The Biology and Clinical Implications' (2018) 34(1) Kaohsiung Journal of Medical Sciences 1, 1–10 <https://doi.org/10.1016/j.kjms.2018.01.007> accessed 16 June 2024.

[9] Ronaldo RR Montiel and others, 'Biology and Mechanobiology of the Tooth Movement During the Orthodontic Treatment' (2024) <https://doi.org/10.5772/intechopen.114016> accessed 16 June 2024.

[10] J Haworth and J Sandy, 'Contemporary Theories of Orthodontic Tooth Movement' (2024) 17(2) Orthodontic Update 56, 56-62 <https://www.orthodontic-update.co.uk/content/orthodontics/contemporary-theories-of-orthodontic-tooth-movement/> accessed 16 June 2024.

[11] Lichao Yan and others, 'Role of Mechano-Sensitive Non-Coding RNAs in Bone Remodeling of Orthodontic Tooth Movement: Recent Advances' (2023) 23 Progress in Orthodontics 55 <https://progressinorthodontics.springeropen.com/articles/10.1186/s40510-022-00450-3> accessed 13 January 2024.

2.3 Traditional and Modern Orthodontics (AAO, 2024)[12]

Orthodontic treatments vary based on technology and methods. The main types include:

- Traditional Braces: Metal brackets attached to the teeth and connected by wires, durable and effective.
- Ceramic Braces: Tooth-colored or clear ceramic brackets; more aesthetic but require careful maintenance.
- Lingual Braces: Attached to the inner side of the teeth; invisible from the outside but harder to clean.
- Clear Aligners: Made from clear plastic; almost invisible and gradually move the teeth into alignment.

2.4 Importance of Orthodontic Specialists

Orthodontists have specialized expertise similar to other medical specialists. Orthodontics involves complex processes, including changes in the jawbone and various tissues as teeth are moved to new positions.[13] Dental undergraduate education is not sufficient for comprehensive orthodontic treatment. Orthodontic specialists receive training in safely and correctly moving teeth, including proper treatment planning, qualifying them as experts.[14] As such, orthodontic treatment should not be performed by general dentists.[15]

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[12] American Association of Orthodontists, 'How Much Do Braces Cost?' (10 April 2024) <https://aaoinfo.org/whats-trending/how-much-do-braces-cost/> accessed 13 July 2024.

[13] American Association of Orthodontists, 'Why Do I Need an Orthodontist?' (22 December 2017) <https://aaoinfo.org/whats-trending/why-do-i-need-an-orthodontist/> accessed 13 July 2024.

[14] American Association of Orthodontists, 'Understanding Orthodontics: What Is an Orthodontist?' (17 November 2017) <https://aaoinfo.org/whats-trending/what-is-an-orthodontist-and-dentofacial-orthopedist/> accessed 13 July 2024.

[15] American Association of Orthodontists, 'Unveiling Truths: Busting Common Orthodontic Myths' (1 October 2017) <https://aaoinfo.org/whats-trending/7-myths-about-orthodontic-treatment/> accessed 13 July 2024.

Although general dentists may place orthodontic appliances, it does not mean they are qualified as orthodontic specialists.[16]

2.5 Impacts of Orthodontic Treatment by General Dentists and Negligent Practitioners in Failing to Adhere to Standards of Dental Practice and Principles

Orthodontic treatment by general dentists without specialized expertise can lead to issues such as in my own case, the most evident issue occurred with a general dentist who provided my first orthodontic treatment. He never once informed me of the need for scaling throughout the 3-4 years of treatment during my high school period (please refer to section 4.2). Not performing scaling during years of treatment, resulting in plaque buildup, gum recession, tooth decay, Studies have found that not scaling teeth during orthodontic treatment significantly impacts oral and periodontal health. Although brushing and flossing regularly are recommended, they may not remove all plaque and calculus, especially with fixed appliances. Patients who have not had scaling in over a year tend to have higher instances of decayed, missing, and filled teeth. Additionally, deeper periodontal pockets, up to 6 mm, are observed in these patients. Therefore, scaling is crucial to avoid these problems.[17]

Inadequate orthodontic treatment from non-specialists can be observed in cases where teeth are pulled without proper calculation and the lack of specific knowledge, along with excessive force being applied during tooth movement, which can lead to dead teeth. Misaligned teeth, incorrect occlusion, jaw and facial deformities are also common outcomes. These problems may necessitate additional treatment and

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[16] American Association of Orthodontists, 'Orthodontist vs. Dentist: Choosing the Right Provider for Your Needs' (20 October 2022) <https://aaoinfo.org/resources/orthodontist-vs-dentist/> accessed 13 July 2024.

[17] Alina Akbar and others, 'Effect of Periodontal Scaling in Patients Undergoing Orthodontic Treatment on General Oral and Periodontal Health' (2024) 4(2) Journal of Health and Rehabilitation Research 754 <https://jhrlmc.com/index.php/home/article/download/939/847/4347> accessed 13 July 2024.

incur higher costs (Collected cases of mismanaged orthodontic cases from Pantip, 2013-2024). etc.[18]

Chapter 3: Issues, Policies, Regulations, and Laws Related to Orthodontics in the United States and Australia

3.1 United States

3.1.1 Relevant Regulations and Laws

In the United States, orthodontic services are regulated by state laws, but the American Dental Association (ADA),[19] comparable to the Thai Association of Orthodontists (TAO), provides overarching guidelines. The American Association of Orthodontists (AAO),[20] akin to the Dental Council of Thailand (DCT), jointly establishes standards for orthodontic training, requiring 3,700 hours or 24-36 months of education focused on tooth movement, jawbone, facial bone, and related tissues, highlighting the distinction between general dentists and orthodontic specialists.[21] The **American Board of Orthodontics (ABO)** plays a crucial role in certifying orthodontic specialists. Founded in 1929, the ABO is the first organization in the world to certify orthodontists through a rigorous examination process. The certification includes written and clinical examinations that assess candidates' expertise in orthodontics to ensure the highest standards of care.[22]

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[18] Pantip, 'References of 10 Clearly Mismanaged Orthodontic Cases from the Most Popular Thai Public Q&A Forum, Pantip, from 2013 to 2024' (2024) <https://drive.google.com/drive/folders/1ZLALe-YPyWoGIvr3EUqyaaQOVVeoViYm?usp=drive_link> accessed 30 July 2024.

[19] American Dental Association, 'Accreditation Standards for Advanced Specialty Education Programs in Orthodontics and Dentofacial Orthopedics' <https://www.ada.org/search-results#q=History&sort=relevancy> accessed 13 July 2024.

[20] American Association of Orthodontists, 'Accreditation Standards for Orthodontic Programs' <https://aaoinfo.org/about/> accessed 13 July 2024.

[21] American Association of Orthodontists, 'Orthodontist vs. Dentist' (20 October 2022) <https://aaoinfo.org/resources/orthodontist-vs-dentist/> accessed 27 June 2024.

[22] American Board of Orthodontics, 'Our Story' <https://americanboardortho.com/about-abo/our-story/> accessed 28 November 2024.

The ABO certification also requires orthodontists to demonstrate their ability to diagnose, plan, and treat orthodontic cases effectively, further distinguishing specialists from general dentists.[23] Such a comprehensive system underscores the structured framework in the United States. While there are significant differences in roles and responsibilities among these organizations, the table below provides a simplified comparison to illustrate their functions in relation to their counterparts in Thailand.

Organization (USA)	Primary Role	Comparable Organization (Thailand)
ADA	Establishes ethical standards and promotes dentistry	Thai Dental Association (TDA) & Thai Association of Orthodontists (TAO)
AAO	Supports education and training in orthodontics	Dental Council of Thailand (DCT)
ABO	Certifies orthodontic specialists	Royal College of Dental Surgeons of Thailand (RCDST)

1. The ADA Code of Ethics mandates that general dentists must not claim, advertise, or imply specialization in areas they are not certified in, such as orthodontics or cosmetic dentistry. General dentists **must** state that their services are provided by a **"general dentist"**.[24] Furthermore, they are prohibited from using titles such as "Orthodontist" or "Cosmetic Dentistry," as these are recognized specialties. Violations may lead to disciplinary actions, including reprimands, suspension, or expulsion from the association.[25]

[23] American Board of Orthodontics, 'About ABO' <https://americanboardortho.com/about-abo/> accessed 28 November 2024.

[24] American Dental Association, Principles of Ethics and Code of Conduct: 5.I., 5.I.2, IV. General Practitioner Announcement of Services (2023) 17–18 <https://commons.ada.org/cgi/viewcontent.cgi?article=1021&context=codeethics> accessed 20 October 2024.

[25] American Dental Association, A Report of the ADA Council on Ethics, Bylaws and Judicial Affairs on Advisory Opinion 5.I.2: Announcement of Credentials in General Dentistry (1999) 1–2 <https://www.ada.org/-

2. In some states, like **California**, it is prohibited for general dentists to advertise orthodontic services without specific training and certification from the Dental Board of California. Section 1680 (h), (i) of the California Business and Professions Code states that advertising or offering dental services without proper qualifications is illegal.[26]

3. In **Texas**, general dentists must inform patients of their status as general dentists or specify any ADA-recognized specializations (§108.52 (b) (4) - (5), (c)). The Texas State Board of Dental Examiners requires that orthodontics and dentofacial orthopedics be treated as specialty areas (§108.54 (b) (3)) and mandates that general dentists not imply expertise in these fields. Practice owners must guarantee compliance with advertising regulations (§108.54 (d) Texas State Board of Dental Examiners, 2019).[27] Referring patients to specialists is not considered an unreasonable refusal of care (§108.5).[28] General dentists must include "General Dentist" or "General Dentistry" in all advertisements, clearly indicating their general practice status, including in any orthodontic advertising (§108.55 22 Tex. Admin. Code).[29]

/media/project/ada-organization/ada/ada-org/files/about/principles/cebja-statements-and-white-papers/announcement_of_credentials_in_general_final_report_on_advisory_opinion_5i2_6-30-99.pdf?rev=ce61118d1df34325baff5ed47c5f392d&hash=605B7832D023B134C09036B615175D3C> accessed 20 October 2024.

[26] California Business and Professions Code, §1680, 2019, Amended by Stats. 2019, Ch. 865, Sec. 42. (AB 1519), Effective January 1, 2020 <https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1680.&lawCode=BPC> accessed 27 June 2024.

[27] Texas State Board of Dental Examiners, 'Rules and Regulations (§108.52 (b) (4) - (5), (c); §108.54 (b) (3))' (2019) 65–67 <https://tsbde.texas.gov/78i8ljhbj/2019/02/TSBDE-Rules-and-Regulations.pdf> accessed 27 June 2024.

[28] Texas State Board of Dental Examiners, 22 Texas Administrative Code § 108.5: Patient Abandonment (2024) <https://casetext.com/regulation/texas-administrative-code/title-22-examining-boards/part-5-state-board-of-dental-examiners/chapter-108-professional-conduct/subchapter-a-professional-responsibility/section-1085-patient-abandonment> accessed 30 June 2024.

[29] Texas State Board of Dental Examiners, 22 Texas Administrative Code § 108.5: Patient Abandonment (2024) 68 <https://casetext.com/regulation/texas-administrative-code/title-22-examining-boards/part-5-state-board-of-dental-examiners/chapter-108-professional-conduct/subchapter-a-professional-responsibility/section-1085-patient-abandonment> accessed 30 June 2024.

This type of regulation is not yet present in Thailand.

3.1.2 An Example of a Judicial Decision Where Legal Reasoning Was Applied to Address a Dental Issue, Which Dentists Around the World Continue to Debate by Referring to Expertise, Knowledge, and Patient Benefit:

In **Kentucky,** a legal case involving a general dentist advertising orthodontic services resulted in disputes across three courts. Ultimately, the Court of Appeals ruled, **"I believe that the fact Dr. Parker himself is highly skilled in orthodontics is immaterial. If Dr. Parker chooses not to become a licensed orthodontist, the state is not obligated to permit him to provide orthodontic services, regardless of the public benefit."** However, the final ruling favored Dr. Parker, with the court declaring that prohibiting general dentists from advertising orthodontic services violates the constitutional right to freedom of speech under the U.S. Constitution. (This ruling is only applicable in the state of Kentucky).[30] Based on the author's review of a wide range of articles, research papers, and public forums abroad addressing this issue, it appears that legal perspectives have been notably absent from the debate. The discussions, which center around general dentists, orthodontic specialists, and the public, are often intense, focusing on knowledge, experience, and expertise—making it a complex debate that is difficult for the general public to fully grasp. In this case, the judge approached the issue through legal reasoning, which aligns with the concept that "even if someone has high expertise, if they do not meet the legal certification requirements, they cannot provide orthodontic services, regardless of their skills or the potential public benefit."

The author acknowledges that there are likely highly skilled general dentists capable of performing orthodontic procedures on par with, or even better than, orthodontic specialists. However, if there were a clear allowance for those who have not qualified to enter the orthodontic program to perform orthodontic procedures, based solely on their skills, it would result in ongoing and unresolved issues.

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[30] Parker v. Commonwealth of Kentucky, Board of Dentistry, 818 F.2d 504 (6th Cir. 1987), <https://casetext.com/case/parker-v-com-of-ky-bd-of-dentistry> accessed 13 July 2024.

Conclusion: Despite the oversight from ethical guidelines, supporting laws, and educational campaigns, findings over the past 15 years (2009-2024) show that 85.0% of people believe dentists performing orthodontic treatments are specialists. Additionally, 89.7% are unaware general dentists cannot call themselves orthodontists without certified training, and 64.2% do not know orthodontists require more education than general dentists. This indicates confusion among the U.S. public regarding orthodontist qualifications, even with government and agency scrutiny over a long period.[31]

Based on the situation in Thailand, there remain violations of the **Dental Council Regulation on Dental Etiquette B.E. 2538 (1995)**,[32] specifically Chapter 3, Section 25(2). General dentists display certificates and diplomas unendorsed by the Dental Council of Thailand in their clinics, with illuminated signs prominently advertising "orthodontics." From the author's additional area survey conducted in October 2024 across parts of Lat Phrao Road and its surrounding areas in Bang Kapi District, Bangkok, Thailand, it was observed that the surveyed area contained five dental clinics. Four of these clinics prominently displayed illuminated signs with extra-large lettering advertising 'orthodontics' without listing the name of the dentist responsible for the treatment. Additionally, three clinics were operated by general dentists who personally performed orthodontic treatments. In one of these clinics, more than three certificates in English were displayed, all issued by private institutions. Notably, none of these certificates bore the endorsement of the Dental Council of Thailand or the Royal College of Dental Surgeons of Thailand. These clinics were all situated within a distance of no more than 100 meters from one another.

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[31] Jae Hyun Park and others, 'Trends in the Choice of a Clinician for Orthodontic Treatment in the United States' (2024) 159(2) American Journal of Orthodontics and Dentofacial Orthopedics 335 <https://www.sciencedirect.com/science/article/abs/pii/S0889540621001736> accessed 13 July 2024.

[32] Dental Council of Thailand, 'Dental Council Regulation on Dental Etiquette B.E. 2538' (1995) <https://dentalcouncil.or.th/en/pdf/Dental%20Etiquette%20B.E.%202538%20(1995).pdf> accessed 28 November 2024.

This reflects the inefficacy of the current regulations, which lack the clarity required to address modern practices effectively. Furthermore, oversight from relevant agencies remains insufficient. From another perspective, legal cases and complaints cannot arise without sufficient public awareness of their rights. Stability in the regulations remains questionable, as existing rules, if interpreted thoroughly, could be effectively enforced. For instance, within the same set of regulations:

- **Section 8** emphasizes the importance of patient safety and cost efficiency.
- **Section 12** prohibits misleading patients in professional dental practice for personal benefit.
- **Section 20** mandates that dental practitioners explain critical information to patients to facilitate informed decision-making regarding treatment.

It is evident that the practice of general dentists performing orthodontics after completing short-term courses conflicts with the aforementioned provisions.

The persistence of these issues is partly due to public statements made by leaders of dental organizations, who have explicitly stated that general dentists are permitted to advertise and perform orthodontics, as there are no laws prohibiting such actions (see details in Sections 4.1.1–4.1.2). Such occurrences remain prevalent even within Bangkok's metropolitan areas.

Such limitations in regulatory enforcement not only allow general dentists to advertise and provide orthodontic services but also highlight the disparity in qualifications and expertise. It is impossible for general dentists, who have only completed a Bachelor of Dental Surgery and attended short-term orthodontic courses, to perform orthodontic treatments at the same level as orthodontic specialists who have completed rigorous and full-time specialized training. This is because the curriculum for general dentists in any country cannot include the intensive entrance exams and the additional 2-3 years of full-time orthodontic training required for specialization. It is generally known that general dentists only receive limited orthodontic training during their dental school years and treat very few orthodontic patients, as will be discussed further in Chapter 4.1.2.

3.2 Australia

3.2.1 Relevant Regulations and Laws

In Australia, the Australian Dental Council (ADC) accredits dental education and conducts licensing examinations.[33] The Dental Board of Australia (DBA) oversees the licensing and regulation of dental practitioners to ensure adherence to professional standards and safety.[34] These organizations share similarities with the Royal College of Dental Surgeons of Thailand (RCDST) and the Dental Council of Thailand (DCT), offering a clearer perspective on their roles. The Australian Society of Orthodontists (ASO) provides information and education to the public, supports the professional development of orthodontists, and promotes proper practice standards. (*)[35] This organization is similar to the Thai Association of Orthodontists (TAO).

Orthodontics in Australia is recognized as a designated dental specialty.[36] The ASO, aligning with the American Association of Orthodontists (AAO), states that general dentists and orthodontic specialists differ in expertise. Orthodontic specialists must undergo three additional years of full-time study or 5,000 hours in an orthodontic specialty program after their dental degree. This training equips them to diagnose, prevent, and treat dental and facial irregularities, ensuring proper tooth alignment and occlusion. Poor occlusion can harm gums and teeth and affect the jaw and facial structure.[37]

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[33] Australian Dental Council, 'About the ADC' <https://adc.org.au/about/> accessed 18 July 2024.

[34] Dental Board of Australia, 'About the Board' <https://www.dentalboard.gov.au/About-the-Board.aspx> accessed 18 July 2024.

[35] Australian Society of Orthodontists, 'About Orthodontics Australia' <https://orthodonticsaustralia.org.au/about/> accessed 18 July 2024.

[36] Australian Health Practitioner Regulation Agency, 'Specialist Registration, Dental Board of Australia' (reviewed 30 March 2023) <https://www.dentalboard.gov.au/Registration/Specialist-Registration.aspx> accessed 25 July 2024.

[37] Australian Society of Orthodontists, '6 Reasons to See an Orthodontist' (10 July 2024) <https://orthodonticsaustralia.org.au/5-reasons-to-see-orthodontist/> accessed 18 July 2024.

The ASO clearly states that general dentists, lacking this full-time training, typically refer patients needing orthodontic care to specialists.[38]

The ASO acknowledges that some general dentists provide orthodontic services, which can confuse the public. However, the ASO emphasizes that orthodontic treatment should be the responsibility of orthodontic specialists, who are thoroughly trained in all types of orthodontic appliances, particularly in correcting malocclusions and jaw issues. This includes studies on facial structure changes, biology, tooth movement, and applied mechanics. Therefore, orthodontic specialists are best qualified to assess, diagnose, and plan treatment to achieve the best outcomes for patients.[39] The ASO also advises the public that orthodontic specialists focus exclusively on orthodontics and do not engage in general dental practices such as scaling or fillings. If they do, they are likely not specialists. Patients can identify orthodontic specialists by the ASO logo displayed at orthodontic clinics, ensuring the highest standards of care.[40]

3.2.2 Example of Legal Dispute:

Dr. Ari Masters, a general dentist, diagnosed and planned orthodontic treatments for patients between 2007 and 2010. He initially used Twinblock appliances,[41] removable plates for the upper and lower jaws to align the jaw with a proper bite from Class II to Class I.[42] Patients had to wear these plates 24 hours a day for about 1-2 months. After the Twinblock phase, Dr. Masters used Myobrace appliances, designed to develop the jaw and align teeth. Patients were instructed to wear Myobrace for two

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[38] Australian Society of Orthodontists, 'When to See a Specialist: Orthodontist vs. Dentist' (1 September 2021) <https://orthodonticsaustralia.org.au/when-to-see-specialist-orthodontist-vs-dentist/> accessed 18 July 2024.

[39] Australian Society of Orthodontists, 'Who Is the Best Person to See for Orthodontic Care?' (5 July 2024) <https://orthodonticsaustralia.org.au/best-person-orthodontic-care/> accessed 18 July 2024.

[40] Australian Society of Orthodontists, 'High-Quality Orthodontic Treatment' (20 January 2022) <https://orthodonticsaustralia.org.au/high-quality-orthodontic-treatment/> accessed 18 July 2024.

[41] 'Twinblock resembles a retainer, while Myobrace looks similar to a boxer's mouthguard. Both are removable orthodontic appliances used to improve bite, occlusion, and tooth alignment'.

[42] 'Treatment or treatment planning to adjust a more complex and protrusive jaw structure classified as Class II to a less complex alignment classified as Class I, which is the least complex'.

hours during the day and at night while sleeping for at least one year. Additionally, a lower jaw appliance was used to further push the lower jaw forward after Myobrace treatment, with a future consideration of using fixed braces. However, the treatment outcomes were not as expected; patients continued to experience issues such as lock-jaw in the morning and jaw pain, even after reverting to using the Twinblock appliance.

Dr. Ari Masters was also found to have inadequately recorded patient treatment data and symptoms, and failed to refer patients to specialists when necessary. This referral should have occurred sooner, resulting in inadequate care for the patients.

Ultimately, the court fined Dr. Ari Masters for three issues: $10,000 (AUD) in 2009 for false and misleading advertising, $7,500 for failing to record diagnostic and treatment plans in accordance with professional standards, and $25,000 in 2010 for failing to refer patients appropriately, resulting in inadequate treatment. In total, he was fined $42,500, approximately 1,007,225 baht at current rates. Additionally, the court ordered Dr. Masters to undergo further training in patient record-keeping, referrals to specialists or other dentists, and orthodontic training, all at his own expense. This training must be conducted by an orthodontic specialist or an orthodontist approved by the national board.[43]

Conclusion: In Australia, while some general dentists provide orthodontic services, they often refer cases to specialists as recommended by the ASO. Errors by general dentists can lead to serious legal consequences, including charges of false advertising, failing to meet professional standards, and not referring patients, resulting in significant fines and mandatory training. For instance, a patient experiencing morning lockjaw and jaw pain led to penalties for a general dentist using specialized orthodontic tools (Twin Block & Myobrace). Thus, general dentists providing orthodontic services face significant risks, as the potential penalties outweigh the benefits.

[43] Victorian Civil and Administrative Tribunal, Dental Board of Australia v Masters (Review and Regulation) [2014] VCAT 1497, <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2014/1497.html?context=1;query=dental;mask_path> accessed 18 July 2024.

Chapter 4: Analysis of Issues in Thailand and Case Studies

4.1 Current Situation of Orthodontic Services in Thailand

4.1.1 Deep-Rooted Overview of Orthodontic Issues in Thailand

Orthodontics is popular in Thailand, with services available in dental clinics and major hospitals. Compared to the author's experience with traditional braces (with brackets fixed to the teeth, using wires and elastics to pull the teeth into alignment) in 2001, current treatments are more affordable and accessible. Prices have not risen significantly, even considering Thailand's average inflation rate of 2.03%.[44] The cost in 2001 was 65,000 THB, excluding expenses for pre-orthodontic treatment procedures (approximately 1,885 USD or 13,650 CNY). Adjusted for inflation, the current price should be around 103,305 THB (approximately 2,996 USD or 21,694 CNY).[45] One key factor is the advancement in manufacturing technology and the efficiency of transportation systems, both of which have made orthodontic treatments more affordable, despite inflation. Additionally, the high level of competition in the orthodontic field today allows dental clinics to reach potential clients through multiple channels. Common marketing strategies include price competition, and one notable area is the use of platforms like **YouTube** and **TikTok.**

However, the process of producing orthodontic specialists according to organizational standards is alarmingly low, due to the need for high-quality orthodontists.[46]

This situation is compounded by short-term orthodontic courses offered by private institutions, often run by retired university dental faculty members or supported by medical organization leaders.[47] Most courses range from 1-2 days to part-

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[44] World Bank, 'Inflation, Consumer Prices (Annual %)' (The World Bank Group, 2024) <https://data.worldbank.org/indicator/FP.CPI.TOTL.ZG?end=2023&locations=TH&skipRedirection=true&start=2001&view=chart> accessed 26 July 2024.

[45] $65{,}000 \times (1 + 0.0203)^{23} \approx 103{,}305$.

[46] Nanchanok Wongsamuth, 'A Kick in the Teeth' *Bangkok Post* (30 October 2016) <https://www.bangkokpost.com/thailand/special-reports/1122637/a-kick-in-the-teeth> accessed 20 October 2024.

[47] Ibid.

time courses lasting 1-2 years, with inconsistent training quality. Some private institutions claim to offer a two-year course, but the actual teaching period totals only 24 days. This contrasts sharply with courses accredited by the Royal College of Dental Surgeons of Thailand, which number fewer than 10 and admit only 5-10 general dentists per institution. These accredited programs require at least 2-3 years of full-time study in dental schools, hands-on clinical training, and treating more than 50 patients before receiving an orthodontic certificate from the Thai Dental Council. Consequently, only 20-30 orthodontists graduate annually (President of the Thai Association of Orthodontists, 2016, as cited by Dr. Chairat Charoemratrote. DDS, Orthodontist).[48]

Over nearly a decade, the number of orthodontic specialists in Thailand registered through the system has never exceeded 1,000. According to the Dental Council statistics in 2006, there were 600 orthodontic specialists, with only 229 holding orthodontic certificates from the Thai Dental Council (Dr. Songvuth Tuongratanaphan, DDS, committee member of the Dental Council in 2016).[49] This means 371 were trained abroad. Currently, there are 485 orthodontic specialists listed on the website of The Royal College of Dental Surgeons of Thailand.[50]

Currently, the Dental Profession Act of Thailand does not prohibit general dentists from providing orthodontic treatment (President of the Thai Association of Orthodontists, 2016).[51] Additionally, a committee member of the Dental Council stated in a 2016 interview: "1.) **The Dental Council will not condemn training programs by private sectors, as those who graduate from them can perform orthodontics even without a certificate from the Dental Council.** 2.) General dentists can put up signs advertising orthodontic services, but they must list all services in the same font size. Advertising a clinic as an orthodontic center is only allowed for certified orthodontists

[48] Thai Association of Orthodontists, 'A Kick in the Teeth' <https://thaiortho.org/a-kick-in-the-teeth> accessed 20 October 2024.

[49] ibid.

[50] Royal College of Dental Surgeons of Thailand, 'Specialist: Orthodontics' <https://www.royalthaident.org/specialist?specialty_id=4> accessed 26 July 2024.

[51] Nanchanok Wongsamuth (n 46).

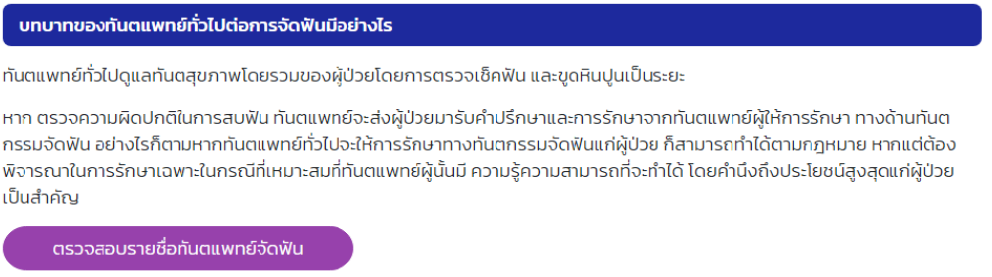
from the Dental Council. 3.) We cannot prevent dentists from attending orthodontic training programs, but we inform them of their limitations (President of the Thai Association of Orthodontists, 2016).[52]

4.1.2 Policy Issues of Dental Organizations Lack Stability in Public Education and Legal Professionals Interested in Orthodontic Damage.

Currently, numerous clinics offer orthodontic services run by general dentists who completed short-term training courses. These clinics often do not display certificates in orthodontics issued or accredited by the Royal College of Dental Surgeons of Thailand.

The problem lies with responsible agencies, which allowed this issue due to clearly communicated policies. The Thai Association of Orthodontists supported general dentists in performing orthodontics, evident at the bottom of the article titled **"A kick in the teeth"**:

What is the role of general dentists in orthodontics? General dentists take care of the overall health of patients by regularly examining teeth and performing scaling. If any occlusal abnormalities are detected, the dentist will refer the patient for consultation and treatment by an orthodontic specialist. However, if general dentists provide orthodontic treatment to patients, they can do so legally, but it must be considered in cases where it is appropriate for the specialist with the necessary knowledge and skills to do so, prioritizing the best interest of the patient.[53]



[52] ibid.

[53] Ibid.

The statement in this image is from the website of the Thai Association of Orthodontists, featured in an article titled "Who is an Orthodontist?" The statement appears under the last section of the article.[54] It creates confusion and acts as a dead end for those harmed by general dentists performing orthodontics. This statement was referenced by victims on **Pantip**, a popular Thai public forum, on 27 October 2016.[55] Additionally, similar victims shared their experiences in two other threads, reporting harm such as general dentists removing braces prematurely without informing the patient, leading to misaligned teeth, protruding teeth, improper bite, and facial structure changes (asymmetry). **Commenters on these threads mentioned that nothing could be done against general dentists, as it was not illegal.**[56] **These threads clearly show the despair of the victims, as no legal professionals provided correct advice.** When victims in this situation[57] search for information on the internet, they find these three threads repeatedly emphasizing that they have no recourse, in contrast to the United States and Australia, where relevant agencies seriously educate the public. This comparison highlights the key differences between the orthodontic systems in Thailand, the United States, and Australia on several important issues:

1. Disclosure as General Dentists, Avoiding Misrepresentation as Specialists, the Right of Patients to Choose Their Providers, and the Referral of Patients:

In the **United States** and **Australia**, as in many other countries, unresolved issues persist. One of the most important measures taken is that general dentists must **"clearly state their status as general dentists when performing orthodontics and**

[54] Thai Association of Orthodontists, 'Who Is an Orthodontist?' <https://thaiortho.org/who-is-orthodontist> accessed 18 October 2024.

[55] Member No. 1650148, 'Did You Know? Dentists Who Have Not Specialized in Orthodontics Can Perform Orthodontics Legally' (Pantip, 27 October 2016) <https://pantip.com/topic/35743685> accessed 2 August 2024.

[56] Member No. 822205, 'After Almost 4 Months of Orthodontic Treatment, Just Found Out That the Dentist...' (Pantip, 12 October 2013) <https://pantip.com/topic/31100550> accessed 2 August 2024.

[57] For example, eight victims, as referenced in section 2.5 Pantip (n 18).

are prohibited from advertising themselves as orthodontists." Such advertising could mislead the public into believing the dentist has specialized expertise. This requirement prompts the public to question why the dentist identifies themselves as a general practitioner, thereby invoking the universal patient right to choose their dental provider. Furthermore, this also includes the issue of referring patients to orthodontic specialists when cases are complex or require advanced expertise. The Australian Society of Orthodontists (ASO) advises that patients should receive treatment from certified specialists and that general dentists should not advertise themselves as orthodontic specialists without proper certification. Violations of this regulation are met with serious legal consequences, including lawsuits and penalties from dental organizations, the public, and the courts, as discussed in Chapter 3.

In **Thailand**, although dental organizations have been aware of these issues for a long time and are familiar with how other countries have addressed them, no laws, regulations, or dental ethics have been amended to resolve the issue. On the contrary, there are guidelines and communications from those within dental organizations (including leaders of the organization) that have opened up channels allowing general dentists to provide orthodontic services. This is in stark contrast to the dental organizations in the **United States** and **Australia**, which focus on educating the public and issuing regulations that aim to protect them. Furthermore, they regularly update their regulations to keep pace with modern developments, unlike in Thailand, where even the dental organizations themselves admit that their rules are outdated and not in line with current circumstances.

Lack of Informed Consent:

Patients or service recipients are often unaware of whether their dentist is a general practitioner or a certified orthodontist. Therefore, the **"patient's right to be adequately informed so they can make an informed decision to consent or not consent to treatment"**[58] cannot be fully exercised, as partially explained in Section

[58] Thai Association of Orthodontists, 'Patient Rights in Dental Care' <https://dentalcouncil.or.th/Pages/PatientRights> accessed 18 October 2024.

3.1.2, paragraph 4, footnote 32, and will be further elaborated in the relevant section of Chapter 5 under the topic of the Dental Council Regulation on Dental Etiquette B.E. 2538 (1995).

Patient Referral in Orthodontic Treatment:

Despite recommendations that general dentists refer patients to orthodontic specialists when abnormalities are detected, general dentists in Thailand can still provide orthodontic services with considerable freedom, due to the interpretation and application of regulations related to specialized expertise by dental organizations, which leave room for general dentists to perform orthodontic procedures. This creates a distinction, and in some cases, it may lead to treatments that are not up to standard or are ineffective, potentially affecting patient outcomes. In certain instances, once general dentists establish their own orthodontic practices, they may not always refer patients to specialists. This might stem from differing perspectives on the necessity of referrals, especially when there are no legal requirements outlining when such referrals should be made or the potential consequences of failing to do so. A related example can be seen in the author's personal experience with their first orthodontic treatment, where the general dentist did not refer the patient to a specialist.

2. Advertising and Public Education:

In the **United States** and **Australia**, relevant organizations such as the ASO (Australian Society of Orthodontists) and ADA (American Dental Association) play a key role in educating the public about the importance of receiving orthodontic treatment from specialists. They help raise public awareness about the differences between general dentists and specialists, a gap that still exists in Thailand.

In **Thailand**, orthodontic advertising is relatively unrestricted, and it appears that dental organizations do not make a strong effort to educate the public about the distinctions between general dentists and orthodontic specialists. Although some orthodontists in Thailand attempt to provide educational content through platforms like **YouTube** and **TikTok,** the information shared tends to focus more on technical aspects and may not always clearly highlight the significant distinction between general

dentists and orthodontic specialists. Thai dentists may recognize that providing straightforward information, similar to that in countries like the United States and Australia, could be somewhat uncomfortable, reflecting the sensitivities within the dental organizational culture in Thailand.

3. Legal Issues:

In **Australia** and the **United States**, laws are clearly defined to penalize general dentists who engage in false advertising or fail to meet professional standards. In contrast, **Thailand** lacks stringent legal measures governing the provision of orthodontic services by general dentists. Although there are regulations that "could be applied," the existing organizational culture and communication practices within dental leadership may limit the effectiveness of these regulations, as previously discussed.

4. Comparative Cases with Similar Circumstances in Thailand That Have Been Addressed Through Updated Regulations Reflecting Current Realities

When comparing the dental profession with plastic surgery, both fields face similar issues. Specifically, general practitioners (who have not specialized in cosmetic surgery, plastic surgery, ophthalmology, or other recognized specialties that must be accredited as such by the relevant regulatory bodies in Thailand) and general dentists often perform specialized procedures for the public with minimal legal oversight. That is, once an individual has graduated as a general practitioner and obtained a medical license, they are legally permitted to perform any procedure, including surgeries such as rhinoplasty, breast augmentation, liposuction, and others. However, whether the surgeries are performed well and safely is another matter entirely.[59]

To address this issue, two recent Medical Council regulations have been issued. The first, **Regulation No. 39/2567,** came into effect on November 6, 2024,[60]

[59] Surawej Numhom, 'Open Rhinoplasty Costs Hundreds of Thousands, but the Result Was a Failure; Upon Checking the Doctor's Name in the Medical Council Database, It Was Found That the Expertise Was Still Lacking' (10 July 2023) <https://www.facebook.com/share/p/NLymeoGSAFvuJbWg/> accessed 4 July 2024.

[60] Medical Council of Thailand, 'Regulation No. 39/2567' <https://www.tmc.or.th/pdf/ann-tmc-39-2567.pdf> accessed 28 November 2024.

while the second, **Regulation No. 62/2567**, come into effect on February 7, 2025.[61] These regulations aim to resolve such problems by clearly defining advertising practices on social media, misleading representations of qualifications or capabilities, and the performance of procedures. They also provide more up-to-date descriptions of offenses and penalties. These issues are nearly identical to those faced in the field of orthodontics, as discussed in this article.

To illustrate the situation prior to the issuance of these Medical Council regulations, the author presents observations from a plastic surgeon who has encountered and described these issues in detail. These observations closely mirror the challenges faced in orthodontics, as highlighted below:

One excellent example comes from **Dr. Surawej Numhom, M.D., FRCST (Plastic Surgery Board Certified, Thai Medical Council), Staff Plastic and Maxillofacial Surgery, a plastic surgeon and professor at the Department of Surgery, Faculty of Medicine, Ramathibodi Hospital, Mahidol University. Dr. Surawej** has written articles and communicated with the public through his personal Facebook page, warning people to be cautious and informed about various surgical procedures under his expertise. He emphasizes that many patients undergo surgeries at clinics where the doctors are not certified in plastic or cosmetic surgery, resulting in numerous cases of surgical errors. Importantly, these errors may not become evident immediately, In some cases, complications or procedural errors may occur within a period of 1 year or thereafter, and in some cases, long-term outcomes should be evaluated over a period of 3 to 5 years.[62] If the physician does not conduct long-term follow-ups with the patients, they may never realize that their medical judgments could also be incorrect".[63] The author has observed parallels between the issues faced in orthodontic practices by general

[61] Office of the Council of State, 'Regulation No. 62/2567' <https://ratchakitcha.soc.go.th/documents/43617.pdf> accessed 28 November 2024.

[62] Surawej Numhom, 'Post-Surgery' (18 January 2024) <https://www.facebook.com/share/p/HwzEbdA229NPxomf/> accessed 18 October 2024.

[63] Surawej Numhom, 'Good Breast Augmentation: The Breast Must Be Beautiful with No Visible Edges' (12 February 2024) <https://www.facebook.com/share/p/eSPf4wYnEKcrAdtf/> accessed 18 October 2024.

dentists and those highlighted in plastic surgery practices in Thailand. For instance, **Dr. Surawej Numhom**, a recognized plastic surgeon, has consistently emphasized the importance of specialized training for ensuring patient safety and minimizing errors. According to **Dr. Surawej**, Thai law does not mandate specialized training for doctors performing cosmetic surgery, which creates significant risks. He highlighted that doctors with limited training may lack awareness of their own limitations, potentially leading to complications in complex cases. Specialized training, which typically spans 3-5 years in an accredited institution, provides the necessary depth and rigor, whereas short courses lasting only a few days or weeks are insufficient to ensure competency.[64]

Similarly, **Dr. Surawej** has pointed out that in Thailand, any doctor can legally claim expertise in cosmetic surgery, often citing a high volume of cases or participation in various courses, which may not meet established standards. He advises the public to approach such claims critically and avoid making decisions based solely on advertising or reviews. **Dr. Surawej** underscores the need for thorough research from reliable sources, as reviews or attractive case studies may conceal complications and underlying issues that surface only after procedures are completed. This perspective aligns with the issues encountered in orthodontic practices by general dentists, where insufficient training may lead to significant risks for patients.[65]

In contrast, Thai orthodontic specialists seem to be significantly afraid of certain powers. Almost no orthodontic specialists openly respond to public forum threads when citizens post questions. For instance, a Google search using the Thai phrase "จัดฟันกับทันตแพทย์ทั่วไป หรือทันตแพทย์เฉพาะทางจัดฟัน **pantip**", or "Orthodontics with general dentists, orthodontic specialists, or intermediate, **pantip**" yields approximately 12 relevant threads on popular public forums. Surprisingly, these threads show significant misinformation, with 7 out of 11 threads promoting the idea that general dentists can

[64] Surawej Numhom, 'If You Want to Call Yourself a Plastic Surgeon..!' (18 February 2024) <https://www.facebook.com/share/p/BfUUp4TgVcjMWhqc/> accessed 18 October 2024.

[65] Surawej Numhom, 'If the First Surgery Goes Wrong, Don't Let the Correction Fail Again' (4 April 2024) <https://www.facebook.com/share/p/exdk1UxBWRVueuRy/> accessed 18 October 2024.

perform orthodontics effectively, based on their experience, and claiming that orthodontic specialists are just a marketing tactic, often by the same individual. Only 3 responses appear to be from orthodontic specialists giving anonymous advice, and 30% of responses offer general advice, such as checking the list of certified orthodontists.[66]

In contrast to similar platforms in the U.S., like **Quora**, where orthodontic specialists provide honest information on similar issues, their answers help readers understand the topics. There are countless threads addressing the same issues.[67] Orthodontic specialists in the U.S. give free, straightforward, and easy-to-understand opinions. For example, on the topic of short-term training for general dentists, there are articles openly informing the public: "Most general dentists learn orthodontics in short weekend courses designed for profit by vendors at hotels or convention centers, unlike competitive university specialty programs. The only requirement for these courses is paying the registration fee. Some courses might be held over multiple weekends over one or two years, but they do not provide the same experience as 2 to 3 years of full-time specialty training. Most weekend orthodontic courses have a 2-day schedule. **How can general dentists achieve the same treatment outcomes as specialists after just one 2-day course? Moreover, is it reasonable to think they can do so in a shorter time and at a lower cost?**".[68] Even with these resources, research shows that over 80% of the U.S. public is still unaware of these issues, as previously discussed.[69]

In **Australia**, Australian Dental Association Queensland (ADAQ) president **Dr. Ralph Kelsey DDS** highlighted the issue in the March ADAQ newsletter. **Dr. Kelsey**

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[66] Patchara Bowornpattanakun, 'All Referenced Documents and Forum Threads' <https://drive.google.com/drive/folders/11bjr4AzAEu4TEleS_w7RAKhpgM8vKVuM?usp=sharing> accessed 2 August 2024.

[67] Quora, 'Does Choosing a Dentist or Orthodontist Matter When Deciding to Use Invisalign?' <https://www.quora.com/Does-choosing-a-dentist-or-orthodontist-matter-when-deciding-to-use-Invisalign> accessed 2 August 2024.

[68] Jorgensen Orthodontics, 'What Is the Difference Between an Orthodontist and a Dentist That Does Orthodontics?' <https://www.jorgensenorthodontics.com/blog/what-is-the-difference-between-an-orthodontist-and-a-dentist-that-does-orthodontics> accessed 2 August 2024.

[69] Jae Hyun Park and others (n 31).

advised against attending short courses for orthodontic skills, emphasizing that general practitioners should not advertise as specialists without proper certification, and noted that complaints about general dentists providing orthodontic services were increasing.[70] In contrast, in Thailand, orthodontists who provide information to the public and express their opinions openly must conceal their identities due to the sensitivity of the dental organization's culture, which may cause them trouble (Dr. Somjit, DDS (Pseudonym), as cited in Wongsamuth, 2016).[71]

It has been observed by professionals that only those who have completed specialized orthodontic training recognize the complexities of orthodontic treatment and agree that general dentists should not perform orthodontics. **This is because dental schools do not train student dentists to be competent in providing active orthodontic treatment.**[72] **In the Bachelor of Dental Surgery program, students receive training and practical experience in simple removable orthodontic appliances for only 1-2 patients** (President of the Thai Association of Orthodontists, 2016).[73] **"In their final year of study, dental students must intern in various specialized dental departments. These internships include orthodontics.** According to Dr. Greg Jorgensen, an orthodontic specialist based in New Mexico, USA, **as a dental student, even in a specialized elective in orthodontics, he only shadowed experts for 2-3 weeks and made a retainer for one patient. He honestly admitted that with such minimal hands-on training, he was not qualified to diagnose, plan treatments, or perform orthodontics on anyone, even though he graduated at the top of his class".**[74]

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[70] Ralph Kelsey, as quoted in 'Great Expectations' *Bite Magazine* (12 October 2015) <https://www.bitemagazine.com.au/great-expectations/> accessed 2 August 2024.

[71] Somjit DDS (under the pseudonym) cited in Nanchanok Wongsamuth (n 47).

[72] Kevin O'Brien, 'Should General Dentists Provide Orthodontic Treatment?' (Kevin O'Brien's Orthodontic Blog, 1 September 2015) <https://kevinobrienorthoblog.com/should-general-dentists-provide-orthodontic-treatment/> accessed 26 July 2024.

[73] Nanchanok Wongsamuth (n 46); Thai Association of Orthodontists (n 48).

[74] Jorgensen Orthodontics, 'What Is the Difference Between an Orthodontist and a Dentist That Does Orthodontics?' (5 September 2019) Jorgensen Orthodontics Blog <https://www.jorgensenorthodontics.com/blog/what-is-the-difference-between-an-orthodontist-and-a-dentist-that-does-orthodontics> accessed 2 August 2024.

Additionally, this viewpoint is also shared by orthodontic organizations in the United States and Australia, as discussed in Chapter 3.

On the other hand, general dentists who perform orthodontics often have a different perspective. This is partly because they have attended short-term training programs before starting orthodontic treatments.[75]

The controversy over orthodontics has existed since its inception. These fundamental disputes will never go away because they have never been resolved, due to the limited interest in finding solutions.[76] These factors cause issues and gaps in regulating orthodontic practice, making it difficult to establish comprehensive laws and regulations to control orthodontics effectively.

4.2 Characteristics of Damages in Orthodontics

4.2.1 Detailed Case Study and the Impact of Orthodontic Treatment by General Dentists: **A Personal Experience**

Due to the lack of detailed case studies in Thailand, I use my experience as a victim of orthodontic harm caused by general dentists for analysis (2001-2003).[77] The dentist, still practicing today, referenced unrecognized foreign certificates, misleading the public.

Note: Before reading the case study, please understand the following limitations.

1.) I underwent traditional orthodontic treatment, which involved the use of braces fixed to the teeth with brackets, wires, and elastics to move the teeth—

[75] Thai Association of Orthodontists (n 48).

[76] Jis Sebastian Nair and Vellore Srinivasan Swathi, 'Debates in Orthodontics' (2021) 3(6) International Journal of Dental and Medical Sciences Research 382 <https://ijdmsrjournal.com/issue_dcp/Debates%20in%20Orthodontics.pdf> accessed 2 August 2024.

[77] In my experience, The information and analysis provided in this section are based on the author's personal experience with orthodontic treatment from 2001 to 2003, and the subsequent discovery of latent harm in 2024.

commonly referred to as traditional braces. This method has been the most popular form of orthodontic treatment from the past to the present.

2.) My first orthodontic treatment occurred approximately 23 years ago, during which time the materials, equipment, production technology, and transportation systems were still expensive—vastly different from the present day.

3.) Even though traditional orthodontic treatment has been taught and practiced for many years, the methods may differ from those used today.

4.) The awareness of patient rights and the availability of information and communication were not as developed 23 years ago as they are today. Therefore, comparisons across these different periods may be influenced by several factors.

5.) Teeth continue to move over time, so the degree of asymmetry and the final misalignment of my face after 23 years is naturally different from the day the braces were removed.

6.) It is important to remember that this account represents **only one** side of the story—a personal perspective.

FIRST Orthodontic Treatment: From 2001-2003, during high school, I had my first orthodontic treatment in Bangkok at a large, expensive clinic. The dentist never discussed the treatment plan or consulted with me, and there was no recommendation for scaling throughout the 3 years. The use of interarch elastics, which I had to wear at home daily for a period of time, had only one configuration, pulling in a single directional angle, meaning that there was no adjustment of the dental arch in the left or right direction, only a direct inward pull. This could lead to subsequent issues, which differs from the second orthodontic treatment (as will be discussed later).

The Day of Removing the Braces: The Day of Removing the Braces: The dentist said, "Today, we will remove your braces." I was shocked and noted my teeth still protruded, even as a child, I was aware that there was an abnormal occlusion of the molars, and asymmetrical gaps were clearly visible when opening my mouth. I immediately asked the dentist if the teeth could be pushed further back, as they still appeared bucked. The dentist responded, **"This is the best we can do with your**

teeth." (Such statements are consistent with the experiences reported by all the victims referenced in Section 2.5, paragraph 2, Footnote 18). I felt the same disappointment as others mentioned in Footnote 18, realizing that even after choosing a high-cost orthodontic service, I couldn't achieve a beautiful smile. At that time, 23 years ago, there was little information about orthodontic treatment, leading me to believe the dentist and accept that my dental structure could not improve beyond that point.

Treatment Outcome: After removing the braces, my teeth were still large and protruding in a curved shape, not straight as they should be. The lower arch was misaligned, with the center not matching the midline. Asymmetrical gaps were noticeable when slightly opening my mouth. The molars couldn't occlude symmetrically; the right molars partially occluded with some gaps, while the left side had a large gap. There were dark brown stains between the molars, receding gums, and large gaps. The dentist never scheduled a follow-up.[78] leading me to believe no further visits were necessary. I never returned to the clinic.

Psychological Impact Over 23 Years Post-Treatment and Resulting Issues: I experienced a persistent lack of confidence in my smile, often smiling without showing much of my teeth, knowing they were still protruding and misaligned. Chewing felt comfortable only on one side after the orthodontic treatment, despite attempts to use both sides. Even though I continued using the same retainer for nearly 7 years, I recall wearing it for several years even during the early years of my career, although I don't remember the exact duration. (I later learned while researching for this article that retainers themselves need to be adjusted by a dentist every 6 months, as they gradually loosen over time). Over time, this imbalance caused my jaw and facial muscles to develop asymmetrically, leading to noticeable facial asymmetry, with changes

[78] The following thread confirms that many patients, not just the author, were not informed by their dentist about the need to adjust their retainers or to continue follow-up visits after completing orthodontic treatment. Many responses in the thread mention that dentists did not provide any instructions, and patients were unaware that they needed to visit their dentist every six months after treatment. The thread is titled: เหตุใดเล่าใจจึงสับสน, 'Do I need to visit my dentist every 6 months to adjust my retainer?' (29 October 2013) <https://m.pantip.com/topic/31169003> accessed 18 October 2024.

occurring gradually year by year. This asymmetry was so pronounced that I had to ask photographers to digitally adjust my face to look straight in photos. It made me reluctant to smile broadly, lacking confidence in my demeanor when smiling or laughing in front of others, making it feel unnatural. I felt a significant sense of inferiority.

Summary: After researching information about orthodontics, I gained crucial insights. There is evidence suggesting that this dentist may have overlooked certain aspects of treatment, such as failing to provide treatment plans, neglecting critical information, improper alignment, omitting corrective steps, and lack of consultation—similar to other victims mentioned in section 2.5, paragraph 2, footnote 18—which aligns with the article **"A Kick in the Teeth,"** as previously studied (Wongsamuth, 2016).[79]

SECOND Orthodontic Treatment: I planned to study abroad and believed a confident smile and facial structure were crucial. Reviewing my photographs, I noticed worsening dental and facial asymmetry, including molar alignment, which had adjusted over time but resulted in more pronounced facial asymmetry. Determined to rectify these issues before studying, I conducted extensive research in Thai and English on orthodontics, focusing on choosing the right orthodontist and understanding potential problems and treatment options. I chose a dentist recognized as a "specialist" in orthodontics by the Dental Council and the Thai Association of Orthodontists. **Dr. Witthaya Wasumetharasamee, DDS, Diplomate, Thai Board of Orthodontics.**[80]

During the Treatment:

1.) Dr. Witthaya's clinic had a dental X-ray machine for orthodontic diagnosis, which was used for two full-mouth X-rays (a panoramic X-ray and a cephalometric X-ray) and three bitewing X-rays to check for cavities. These X-rays were performed before starting treatment and near the completion phase. During the treatment, Dr. Witthaya

[79] Nanchanok Wongsamuth (n 46); Thai Association of Orthodontists (n 48); Royal College of Dental Surgeons of Thailand (n 50).

[80] During the course of treatment, the author did not inform **Dr. Witthaya** of the intention to record and collect data for the purpose of writing this article. This was done to ensure impartiality for all parties involved. The author notified Dr. Witthaya one day prior to the submission of this article, and no request for advice or comments regarding this article was made.

observed thinning of the gingiva on the lower right side near the molars (specifically the last molar, where cervical wear was found near the gumline). This raised concerns about potential abnormalities, as the cervical abrasion on this last lower molar appeared unusual (the author vaguely recalls that this condition has existed since the first removal of braces). However, after conducting an X-ray, no further abnormalities were found in the roots or gingiva. Additionally, a final X-ray will be performed on the day the orthodontic treatment is completed. The use of advanced diagnostic tools and clear communication about X-rays is crucial for accurate diagnosis and serves as vital evidence for both parties.

2.) During the initial consultation, Dr. Witthaya identified all my dental issues and provided a clear treatment plan. This included explanations of different orthodontic techniques, expected duration, benefits and risks, and details on procedures like scaling, teeth filing, and the implications for my age and gum recession. Costs were also transparently discussed.

3.) Throughout the monthly treatments, Dr. Witthaya explained the tools and materials used, such as wire sizes and elastic ligatures, and the reasons for their selections. He provided insights into tooth movement, pain management, closing interdental spaces, tongue positioning, and the importance of using dental floss and soft-bristled toothbrushes.

4.) Dr. Witthaya also provided information about plaque accumulation and its removal over time, and alerted me when tartar began to accumulate.

5.) During different periods, I was given elastic bands to wear at home to adjust symmetry at various angles, with multiple sizes and different pulling configurations—approximately 4-5 patterns during each period.

6.) My bite and jaw alignment were closely monitored and improved to normal. Currently, the dental midline refers to the imaginary line between the upper and lower teeth, which had not aligned correctly since the removal of the braces in high school. As of today (19 October 2024), it has been properly aligned under Dr. Witthaya's careful observation.

7.) The issue of asymmetric mouth opening, which arose from the first orthodontic treatment, has been resolved. I feel a significant difference in completeness.

8.) When slightly opening my mouth, it is noticeable that the gaps between the upper and lower dental arches are parallel and symmetrical, creating a clear and beautiful alignment.

9.) My smile and facial structure have become significantly more symmetrical, which is noticeably improved.

10.) Near the end of the treatment, Dr. Witthaya sought my input on the progress, discussing potential additional adjustments, such as minor teeth filing to create more space or reduce the size of the front teeth, and the associated risks like enamel loss. He also discussed methods for filling black triangles, explaining the pros and cons of each option in detail, and emphasized safety, suggesting alternatives if necessary.

Additionally, when Dr. Witthaya learned I would study abroad after treatment, he explained the necessity of using retainers. He advised regular dental check-ups every six months while abroad since tooth movement and retainers need constant monitoring and adjustments.

11.) The issue of gum recession that created triangular black spaces in my smile has been resolved, with my upper front teeth now in close contact. The lower front teeth have improved significantly from their previous condition, including the gaps in the molars resulting from gum recession. All of these issues have been satisfactorily addressed.

Treatment Outcome: Although the orthodontic treatment is not yet complete (28 November 2024), the results are already noticeable. with well-aligned teeth, jaw, and facial structure. This has improved my quality of life physically and mentally, increasing my confidence in speaking, smiling, and interacting with others. This improvement aligns with studies showing significant improvements in quality of life after correcting midline diastema with fixed orthodontic appliances.[81] Another study indicated

[81] Sundari Nagalakshmi and others, 'Changes in Quality of Life During Orthodontic Correction of Midline Diastema' (2014) 6(Suppl 1) Journal of Pharmacy and Bioallied Sciences S162 <https://doi.org/10.4103/0975-7406.137435> accessed 2 August 2024.

fewer issues like physical pain, oral discomfort, psychological distress, and social impact after correcting malocclusion.[82] Correct orthodontic treatment from a specialist enhances a patient's quality of life, improving oral function and self-confidence, which are crucial clinically and psychologically.[83] Misaligned teeth can greatly impact overall oral health and quality of life, particularly in psychological and social aspects.[84] Studies also show a significant reduction.

From my second orthodontic treatment, it became clear that teeth, dental structure, jaw, and facial framework can be properly aligned. Significant improvements were observed. Errors by a general dentist often go unrecognized without specialist treatment. The real extent of damage is often unrecognized because patients are unaware of their suffering (torts for latent harm).

Moreover, the question arises: 'What percentage of errors in traditional fixed orthodontics qualifies as **substandard**?' Additionally, how many of these cases fall short of **effectiveness** compared to treatments by orthodontic specialists? From my research, both domestically and internationally, there are no specific numerical figures provided. However, the physical evidence of these errors is often visibly apparent, as previously studied. For instance, a comparative analysis with standards in surgical medicine, particularly in procedures involving complex internal structural changes, offers valuable insight. For example, **Dr. Surawej Numhom, M.D., FRCST (Plastic Surgery Board Certified, Thai Medical Council), Staff Plastic and Maxillofacial Surgery,**

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[82] Mani Andiappan and others, 'Malocclusion, Orthodontic Treatment, and the Oral Health Impact Profile (OHIP-14): Systematic Review and Meta-Analysis' (2015) 85(3) Angle Orthodontist 493, 493 <https://doi.org/10.2319/051414-348.1> accessed 2 August 2024.

[83] Luiz Gustavo Ribeiro and others, 'Impact of Malocclusion Treatments on Oral Health-Related Quality of Life: An Overview of Systematic Reviews' (2023) 27 Clinical Oral Investigations 907 <https://link.springer.com/article/10.1007/s00784-022-04837-8> accessed 2 August 2024.

[84] Gabriel Luiz Nogueira Souza and others, 'Impact of Treatment with Orthodontic Aligners on the Oral Health-Related Quality of Life' (2024) 24 BMC Oral Health Article 419 <https://link.springer.com/article/10.1186/s12903-024-04183-z> accessed 2 August 2024.

has previously noted that surgery inherently involves risks, regardless of the materials used or the thoroughness of preparation. He emphasized that to meet acceptable standards, new surgical cases should have a success rate exceeding 90%. If complications arise in more than 10% of cases (excluding revision surgeries), it raises questions about the adequacy of the service standards.[85]

In summary, while it is true that general dentists who have not completed a standard specialized orthodontic program may develop expertise over time by practicing on real patients—who are often unaware of the dentists' actual qualifications and have only undergone short-term training—it raises both concerns and questions. Specifically, it becomes evident that for general dentists to become proficient in orthodontics, they must engage in planning, diagnosing, and treating patients who may not be fully informed that the dentist has only undergone short-term training and is not a formally trained specialist. Studies show that undergraduate dental programs typically involve orthodontic training on only two cases, and short-term courses often lack hands-on patient exposure under close supervision, as seen in standard orthodontic programs.

Therefore, for general dentists who are practicing orthodontics or those who have recently completed short-term orthodontic training, this raises the significant question: does this constitute experimentation on human subjects without informed consent? This is particularly relevant under the **Dental Council Regulation on Dental Etiquette B.E. 2538 (1995)**, **Chapter 6, Sections 39–41,** which explicitly prohibits human experimentation without informed consent.[86]

Chapter 5: Application of Existing Laws When Damage Occurs

Department of Health Service Support Announcement on Criteria, Methods, Conditions, and Fees for Advertising or Announcing about Health Establishments B.E. 2562 (2019) In 2019, an enforceable announcement with penalties for violations

[85] Surawej Numhom, 'The Business of Commercial Cosmetic Surgery and Medical Ethics: Where Is the Balance?' (29 April 2024) <https://www.facebook.com/share/p/8ZNab29tS8eEkxNE/> accessed 19 October 2024.

[86] Dental Council of Thailand (n 32).

related to advertising about health establishments was issued. Considering Sections 7 (1) - (3) of the announcement, it states: "**(2) Advertising or announcing that leads the general public to understand** or expect that there are professionals or personnel at the health establishment when in fact there are none or it is not as advertised. This includes **advertising about the knowledge, expertise, quality, efficiency, effectiveness of professionals, properties,** treatment methods, **or diseases treated in a misleading manner, not according to professional standards.**"

While the current Thai Dental Professional Act does not bar general dentists from offering orthodontic services, the former president of the Thai Association of Orthodontists in 2016 explicitly stated in an interview that the organization's policy—communicated to both the public and its members—includes the following:[87]

1. The Dental Council allows private sector training program graduates to perform orthodontics without a certificate.

2. General dentists can advertise orthodontic services, but all services must be listed in the same font size. Only certified orthodontists can advertise a clinic as an orthodontic center.

3. Dentists can attend orthodontic training programs, but they are informed of their limitations.[88]

Moreover, the Thai Association of Orthodontists has clearly stated on its website that "general dentists can legally perform orthodontics."[89]

However, none of these statements constitute law or have binding authority to support general dentists in providing orthodontic services. It is widely recognized in both international and Thai dental communities that undergraduate dental education does not provide sufficient training in orthodontics, and short-term training programs are not acceptable.

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[87] Nanchanok Wongsamuth (n 46); Thai Association of Orthodontists (n 48); Royal College of Dental Surgeons of Thailand (n 50).

[88] Ibid.

[89] Nanchanok Wongsamuth (n 46).

Thus, when general dentists claim to offer orthodontic services—a specialty field that necessitates further education, typically 2-3 years of full-time training to develop specific orthodontic skills, and recognized as a specialty by law—it contradicts the Department of Health Service Support Announcement on Criteria, Methods, Conditions, and Fees for Advertising or Announcing about Health Establishments B.E. 2562 (2019), Section 2. This announcement is legally enforceable and includes clear penalties.

Furthermore, when general dentists render orthodontic services at multiple clinics that they do not own, even if they do not display certificates, diplomas, or other short-term courses not recognized by the Dental Council or the Royal College of Dental Surgeons of Thailand, but claim on social media, it is equivalent to displaying such credentials at the clinic. This misleads the public into believing they are orthodontic specialists, violating the Announcement of the Dental Council on Guidelines for Advertising Dental Practices B.E. 2557, Sections 2 (4), paragraph 2 and 3, and Section 3.[90] Regardless of whether the term "treatment" or "service" is used to circumvent legal enforcement, any advertisement or announcement about the qualifications or abilities of practitioners at health establishments, which may cause significant misunderstanding about the services provided, constitutes a violation if not followed:

An evident example is that the first dentist who provided orthodontic treatment to the author continues to claim in his biography that he specialized in orthodontics from a certain Western country, with the name of a specific university appearing. This post serves as an advertisement stating that he is part of a team of specialists in orthodontics at a department of a hospital in Thailand, clearly indicating the date for orthodontic consultations. However, the certificate that this general dentist cites has not been recognized by the Dental Council and the Royal College of Dental Surgeons of Thailand, meaning he is not listed in the registry of orthodontists. Thus, this demonstrates

[90] Thai Dental Council, 'Announcement of the Dental Council Regarding Guidelines Related to Advertising the Practice of Dentistry, B.E. 2557' (2014) <https://www.thaiaoms.org/main/download/upload/upload-20190824221121.pdf> accessed 2 August 2024.

an attempt to evade displaying credentials or qualifications not recognized by dental organizations in the current era.

Dental Council Regulation on Dental Etiquette B.E. 2538 (1995),[91]

Section 12: A dental practitioner must not deceive or mislead patients in their professional practice for personal gain.

Section 20: A dental practitioner must explain to patients the essential aspects of dental services, enabling the patient to make informed decisions regarding their treatment. They must also disclose the costs of services to the patient, providing a breakdown of each item and the total cost **"upon request."** The phrase "upon request" at the end of Section 20 implies that if there is no request from the patient, failing to explain these essential details for decision-making is not considered a violation.

Additionally, **Health Business Establishments Act, B.E. 2559 (2016)** [92] Section 38, paragraph 2, and Section 68, paragraph 2, imposes a fine of up to 20,000 baht and/or imprisonment for up to 1 year. Violations also incur a daily fine of up to 10,000 baht until the illegal advertisement is ceased. This Act has higher legal standing than regulations, announcements, or professional ethical codes.

which emphasizes the level of legal authority due to the fact that the Dental Council has issued an ambiguous announcement in Section 3. The summary states: If an individual lacks a certificate or diploma of expertise from the Dental Council, terms like "provider" or "dental care provider" should replace "specialist," specifying the dental branch per Council regulations and followed by the degree, certificate, or qualifications obtained according to the Council's rules or recognized institutions. An example given is: "Provider of orthodontic dental care.[93] This announcement will cause public confusion.

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[91] Dental Council of Thailand (n 32).

[92] Office of the Council of State, 'Section 38, Paragraph 2 in Conjunction with Section 68, Paragraph 2 of the Health Establishment Act, No. 4, B.E. 2559' (2016) <https://www.ratchakitcha.soc.go.th/DATA/PDF/2559/A/107/41.PDF> accessed 2 August 2024.

[93] Thai Dental Council, 'Announcement of the Dental Council Regarding Guidelines Related to Advertising the Practice of Dentistry, B.E. 2557' (2014) <https://www.thaiaoms.org/main/download/upload/upload-20190824221121.pdf> accessed 2 August 2024.

The Civil and Commercial Code, Sections 156, 162, and 178, can be applied to substandard orthodontic services. The Supreme Court's decision (Case No. 3149/2560) establishes that while a medical service contract is not a pure hire-of-work contract, it remains a type of contract. Due to current technology, such as 3D dental scanning machines to simulate future dental structures (this equipment is available in some clinics), orthodontic treatment outcomes can be predicted with a high degree of accuracy. Even in cases where this equipment is not available, if the patient does not have complex dental abnormalities, orthodontic specialists can still make predictions that are "relatively" accurate. Furthermore, the accuracy will continue to improve over time, as adjustments and assessments of the dental structure are made continuously each month throughout the treatment, assuming there are no other complications arising during the treatment that are not attributable to the dentist. Many of these complications can stem from the patients themselves, such as not following recommendations for plaque removal, failing to maintain proper oral hygiene habits, not wearing elastic bands daily when required, missing dental appointments for extended periods, or experiencing nutritional deficiencies, among other factors.

The qualifications of orthodontic specialists are crucial in forming the contract. If a patient knew the provider was a general dentist without orthodontic specialization, they would not agree to the treatment. Such misrepresentation amounts to fraud, making the contract voidable and enabling the patient to annul it and recover payments after reasonable expenses are deducted.

For damages arising from improper occlusion, jaw misalignment, and facial asymmetry, the patient can claim damages under Section 420 (Torts) by providing evidence of inadequate orthodontic education and skills. The court will determine appropriate damages to restore the patient's condition or reimburse incurred expenses under Section 438 of the Civil and Commercial Code.

Chapter 6: Conclusion and Recommendations

6.1 Summary

Orthodontics provided by general dentists has long been problematic in major dental nations like the U.S. Despite efforts such as dental ethics codes, laws, and public education, many Americans struggle to differentiate between general dentists and orthodontists.[94]

Australia faces similar issues, despite easy access to English-language resources. Both countries have clear policies to oppose orthodontic treatment by general dentists and to counter short-term courses, yet the problem persists.

In **Thailand**, the situation is worse due to a lack of regulations governing general dentists in orthodontics. Authorities not only fail to oppose but seem to support general dentists offering orthodontic treatment through various means, including Dental Council announcements and support from the Dental Association, as discussed in previous chapters.[95]

6.2 Summary of Legal Issues

6.2.1 Harm from Orthodontic Treatment by General Dentists

Orthodontic treatment performed by general dentists who lack specialized training may carry certain significant risks, such as improper tooth alignment, incomplete occlusion, and potential misalignment,[96] which could lead to the deterioration of teeth and gums. In some cases, inadequate treatment may necessitate corrective procedures that can be both costly and time-consuming.[97]

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[94] Jae Hyun Park (n 31).

[95] Nanchanok Wongsamuth (n 46); Association of Orthodontists (n 48); Royal College of Dental Surgeons of Thailand (n 50); Member No. 1650148 (n 55).

[96] as studied through academic opinions of experts, as well as various articles in Chapters 3, 4, and 5.

[97] William R Proffit, Henry W Fields, and DM Sarver (n 5).

6.2.2 Calculation of Compensation Claims

Claims for damages in torts can be filed as small claims, covering damages and verifiable expenses for new treatment. Filing fees range from 200-2,000 Baht. Court proceedings are informal and swift, seeking additional evidence if necessary. Lawsuits must be filed within one year of knowing the malpractice and within ten years of its occurrence.[98]

6.2.3 Gathering Evidence

Although patients can access their medical records and treatment details from healthcare facilities or responsible physicians, in practice, obtaining such records from dental clinics may be challenging. Therefore, individuals undergoing orthodontic treatment should take photographs of their X-ray films immediately on the day of the X-ray, as well as capture images of their teeth from various angles before treatment, at least every three months during treatment, and at least every six months after treatment. These images can document visible changes and serve as valuable evidence.

In terms of academic information, in addition to all the references provided in this article, the significant improvements observed in the second orthodontic treatment performed by a certified orthodontist can also serve as key evidence.

Orthodontics is a specialized field that requires rigorous training through accredited orthodontic programs in dental schools. The absence of specific legal prohibitions against general dentists performing orthodontic treatment does not imply that orthodontic procedures performed without sufficient specialized knowledge—based on internationally recognized orthodontic curricula—are exempt from liability when clear evidence of treatment inefficacy emerges.

International references and expert opinions from certified orthodontists can also support the case.[99]

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[98] Civil and Commercial Code, Sections 420, 443, and 438.

[99] Official Information Act B.E. 2540 (1997) Section 32.

6.3 Recommendations for Legal Improvement

6.3.1 Guidelines for Legal Improvement

The involvement of legal professionals, along with updating regulations in line with the Medical Council of Thailand, Regulation No. 39/2567 and Regulation No. 62/2567,[100] as well as adopting regulatory frameworks from the United States and Australia, may help address existing issues. However, both countries still face issues in certain aspects, similar to Thailand. **The key areas for improvement are as follows:**

1.) Engagement of Legal Professionals: Laws related to science and medicine often receive limited attention due to their technical nature. Encouraging legal professionals to engage in these fields could significantly address these issues, as evidenced by the lack of legal advice in public forums for orthodontic malpractice victims.

One of the approaches that is expected to be effective and cost-efficient is **to discuss it in law schools**, specifically in courses on tort law and evidence law. This would foster important debates and discussions. In every law school around the world, there are likely to be a number of students undergoing orthodontic treatment in each class every year, including those who are currently undergoing treatment, have previously had orthodontic work done, or have family members involved in orthodontic issues. This issue, at the very least, would create immediate and direct benefits from this group of students, who would initiate serious research and inquiries because they are directly affected. This group of students would also be the ones to begin scrutinizing and providing critiques and recommendations to the public in public media, including the initiation of rights to contest various processes, such as advertising that does not comply with regulations. They would also gain insights into selecting treating dentists based on patient rights, negotiating with dentists regarding treatment plans, and being able to contest any unfair termination of treatment by dentists. Additionally, they would learn how to negotiate if the teeth are still misaligned and

[100] Office of the Council of State (n 61); Surawej Numhom (n 62).

there are clear errors, and even in the final stages, they would know what evidence to prepare in cases that are difficult to prove, as explained in this article.

These efforts will serve as a driving force that impacts general dentists, or even orthodontic specialists, who may cause harm to patients or service recipients and who have engaged in advertising and providing orthodontic services without adhering to adequate standards of care. This will enable them to break free from the cycle of creating harm, fostering a reciprocal impact that aligns with the concept of the **Butterfly Effect**, where everything may begin in the classrooms of law students.

Moreover, employing legal principles to address these problems, as highlighted in the opinions of judges in cases that have arisen in **Kentucky,** USA, is particularly interesting. As previously discussed in Chapter 3, I would like to reiterate the language from the ruling: **"I believe that the fact Dr. Parker himself is highly skilled in orthodontics is immaterial. If Dr. Parker chooses not to become a licensed orthodontist, the state is not obligated to permit him to provide orthodontic services, regardless of the public benefit."**[101] This statement underscores that even if someone possesses high expertise, if they do not meet the legal certification requirements, they cannot provide orthodontic services, regardless of their skills or the potential public benefit.

2.) It is proposed that the Dental Council of Thailand revise and clarify its ethical standards by providing detailed case-by-case definitions of the implications and penalties for general dentists who have not completed a specialized orthodontic training program recognized internationally and approved by the Dental Council of Thailand. This includes addressing situations where such general dentists engage in advertising practices that mislead the public into believing they possess qualifications in orthodontics that meet professional standards.

The revised regulations should be comprehensive, up-to-date, and inclusive of definitions of misconduct and clear penalties, reflecting the modern context where various forms of technology are used for advertising. The proposal draws parallels with

[101] Parker v. Commonwealth of Kentucky, Board of Dentistry (n 30).

"Medical Council of Thailand, Regulation No. 39/2567 and Regulation No. 62/2567," as studied in Section 4.1.2, footnotes 61 and 62.

Furthermore, it emphasizes adopting best practices observed in the United States and Australia, particularly the requirement that general dentists who have not completed the specified program **must** clearly inform patients from the outset that they are **"general dentists,"** as analyzed in Chapter 3.

6.3.2 Enhancing Public Knowledge and Understanding

Enhancing public knowledge about orthodontics and potential damages, as well as guidelines for claiming damages, is crucial. Despite multiple screening measures and proactive public education in the U.S., studies over the past 15 years show many people are still unaware of the differences between general dentists and orthodontic specialists.[102] "This highlights the need to assess whether each country's measures are sufficient to protect the public. Without equivalent policies and measures, the low number of reported victims—which includes cases of individuals reporting harm from orthodontic treatment and complaints filed against dentists within the Dental Council of Thailand's system[103]—does not reflect the actual number of affected individuals. Many people may be unaware that they have suffered damage in a way that allows them to seek legal recourse.

6.4 Patient Responsibility in Orthodontic Treatment

Orthodontic treatment errors or outcomes that do not align with the treatment plan, agreements, expectations, or established standards—resulting in significant impact on the treatment—may, in some cases, be attributed primarily to the patient rather than the dentist. For instance, patients may fail to follow the orthodontist's instructions, such as not wearing elastics as prescribed, not undergoing scaling as recommended, or

[102] Jae Hyun Park (n 31).

[103] Dental Council of Thailand, 'Statistics on Dental Council Ethics Cases' (8 July 2024) <https://dentalcouncil.or.th/Articles/Contents/Detail/1/obQkegMN9K2Icd0j> accessed 28 November 2024.

neglecting basic oral hygiene standards. Additionally, using excessively hard toothbrushes (leading to gum recession and enamel wear), frequently consuming acidic foods like sour fruits that require chewing, consuming excessive amounts of vinegar-based foods over an extended period, regularly eating sugary foods, and failing to maintain proper oral hygiene may contribute to treatment failure. Patients may refuse to extract impacted teeth or other teeth that need to be removed, which can obstruct tooth alignment and prevent successful treatment outcomes. Furthermore, patients may fail to fill cavities, leading to decay reaching the pulp, and subsequently refuse to proceed with the necessary treatment.

When such complications arise due to patient behavior, it is unreasonable to hold the dentist responsible for the adverse results. However, the extent of each party's liability depends on the relationship between actions and outcomes, combined with the expert opinions applicable to each individual case. For example, it would not be acceptable for a dentist to deny all responsibility for substandard orthodontic treatment simply because the patient missed 3-4 consecutive appointments.

The author has developed a supplemetary guidance for prospective orthodontic patients which is available online.[104]

[104] Patchara Bowornpattanakun, 'Considerations for Orthodontic Treatment Planning' (2024) <https://drive.google.com/drive/folders/1h80UqI2NYM3nBnEcaWlgGZevD2c1R_9s?usp=sharing>.