

CHAPTER 134
DISCIPLINE FOR MASSAGE THERAPISTS

[Prior to 6/26/02, see 645—Ch 131]

645—134.1(152C) Definitions.

“*Board*” means the board of examiners for massage therapy.

“*Discipline*” means any sanction the board may impose upon licensees.

“*Licensee*” means a person licensed to practice as a massage therapist in Iowa.

645—134.2(152C,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—134.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

134.2(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state, which includes the following:

a. False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or

b. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

134.2(2) Professional incompetency. Professional incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other practitioners in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average practitioner acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of a massage therapist in this state.

e. Inability to practice with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

134.2(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

134.2(4) Practice outside the scope of the profession.

134.2(5) Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

134.2(6) Habitual intoxication or addiction to the use of drugs.

134.2(7) Obtaining, possessing, attempting to obtain or possess, prescribing, selling, giving away, or administering controlled substances without lawful authority.

134.2(8) Falsification of client records.

134.2(9) Acceptance of any fee by fraud or misrepresentation.

134.2(10) Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes a failure to exercise due care including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

134.2(11) Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within the profession which includes, but is not limited to, a felonious act which is so contrary to honesty, justice or good morals and so reprehensible as to violate the public confidence and trust imposed upon the licensee. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

134.2(12) Violation of a regulation or law of this state, another state, or the United States, which relates to the practice of the profession.

134.2(13) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure by the licensee to report in writing to the board revocation, suspension, or other disciplinary action taken by a licensing authority within 30 days of the final action. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board.

134.2(14) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the practice of the profession in another state, district, territory or country.

134.2(15) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

134.2(16) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

134.2(17) Engaging in any conduct that subverts or attempts to subvert a board investigation.

134.2(18) Failure to comply with a subpoena issued by the board, or failure to otherwise cooperate with an investigation of the board.

134.2(19) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

134.2(20) Failure to pay costs assessed in any disciplinary action.

134.2(21) Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

134.2(22) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

134.2(23) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice as a massage therapist.

134.2(24) Failure to report a change of name or address within 30 days after it occurs.

134.2(25) Representing oneself as a massage therapist when one's license has been suspended or revoked, or when one's license is on inactive status.

134.2(26) Permitting another person to use the licensee's license for any purpose.

134.2(27) Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

134.2(28) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but need not be limited to, the following:

- a. Verbally or physically abusing a client or coworker.
- b. Improper sexual contact with, or making suggestive, lewd, lascivious or improper remarks or advances to a client or coworker.
- c. Betrayal of a professional confidence.

d. Engaging in a professional conflict of interest.

e. Promotion for personal gain of an unnecessary drug, device, treatment, procedure, or service or directing or requiring an individual to purchase or secure a drug, device, treatment, procedure, or service from a person, place, facility, or business in which the licensee has a financial interest.

134.2(29) Failure to comply with universal precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

134.2(30) Practicing the profession while the license is under suspension, inactive or delinquent for any reason.

134.2(31) Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

645—134.3(147,272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period, the licensee's engaging in specified procedures, methods, or acts.
4. Probation.
5. Require additional education or training.
6. Require a reexamination.
7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed \$1000.
9. Issue a citation and warning.
10. Such other sanctions allowed by law as may be appropriate.

645—134.4(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care to the citizens of this state;
2. The facts of the particular violation;
3. Any extenuating facts or other countervailing considerations;
4. The number of prior violations or complaints;
5. The seriousness of prior violations or complaints;
6. Whether remedial action has been taken; and
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

645—134.5(152C) Civil penalties.

134.5(1) Civil penalties may be imposed upon a person or business that employs an individual who is not licensed as a massage therapist. Civil penalties may be imposed upon a person or business that employs an individual who uses the initials "L.M.T." or the words "licensed massage therapist," "massage therapist," "masseur," or "masseur," or any other words or titles which imply or represent that the employed person practices massage therapy but who is not licensed as a massage therapist. Failure to follow the above may result in:

- a.* A civil penalty not to exceed \$1000 on a person or business that violates this rule:
 - (1) Each violation is a separate offense.
 - (2) Each day a continued violation occurs after citation by the board is a separate offense with the maximum penalty not to exceed \$10,000;
- b.* The board's inspection of any facility which advertises or offers services purporting to be delivered by massage therapists;
- c.* A citation being sent to the alleged violator by certified mail, return receipt requested; and
- d.* The board's consideration of the following in determining civil penalties:
 - (1) Whether the amount imposed will be a substantial economic deterrent to the violation.
 - (2) The circumstances leading to or resulting in the violation.
 - (3) The severity of the violation and the risk of harm to the public.
 - (4) The economic benefits gained by the violator as a result of noncompliance.
 - (5) The welfare or best interest of the public.

134.5(2) Civil penalties may be imposed upon a person who is practicing as a massage therapist without a license. Civil penalties may be imposed upon a person who practices as an individual and uses the initials "L.M.T." or the words "licensed massage therapist," "massage therapist," "masseur," or "masseuse," or any other words or titles which imply or represent that the person practices massage therapy but who is not licensed as a massage therapist. A person must be licensed as a massage therapist to practice in this state as a massage therapist. Failure to follow the above may result in:

- a.* A civil penalty not to exceed \$1000 on a person who violates this rule:
 - (1) Each violation is a separate offense.
 - (2) Each day a continued violation occurs after citation by the board is a separate offense with the maximum penalty not to exceed \$10,000;
- b.* The board's inspection of any facility which advertises or offers services purporting to be delivered by massage therapists;
- c.* A citation being sent to the alleged violator by certified mail, return receipt requested;
- d.* The board's consideration of the following in determining civil penalties:
 - (1) Whether the amount imposed will be a substantial economic deterrent to the violation.
 - (2) The circumstances leading to or resulting in the violation.
 - (3) The severity of the violation and the risk of harm to the public.
 - (4) The economic benefits gained by the violator as a result of noncompliance.
 - (5) The welfare or best interest of the public.

134.5(3) Issuing an order or citation.

- a.* The board shall provide a written notice and the opportunity to request a hearing on the record.
- b.* The hearing must be requested within 30 days of the issuance of the notice and shall be conducted according to Iowa Code chapter 17A.
- c.* The board may, in connection with a proceeding under this subrule, issue subpoenas to require the attendance and testimony of witnesses and the disclosure of evidence and may request the attorney general to bring an action to enforce the subpoena.

134.5(4) Judicial review.

- a.* A person aggrieved by the imposition of a civil penalty under this rule may seek a judicial review in accordance with Iowa Code section 17A.19.
- b.* The board shall notify the attorney general of the failure to pay a civil penalty within 30 days after entry of an order or within 10 days following final judgment in favor of the board if an order has been stayed pending appeal.
- c.* The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs.
- d.* An action to enforce an order under this rule may be joined with an action for an injunction.

134.5(5) A person is not in violation of the statute or rules if that person practices massage therapy for compensation while in attendance at a school offering a curriculum meeting the requirements of 645—Chapter 132 and is under the supervision of a member of the school's faculty.

645—134.6(152C) Order for mental, physical, or clinical competency examination or alcohol or drug screening. A licensee who is licensed by the board is, as a condition of licensure, under a duty to submit to a mental, physical, or clinical competency examination, including alcohol or drug screening, within a time specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the licensee's expense.

134.6(1) Content of order. A board order for a mental, physical, or clinical competency examination shall include the following items:

- a. A description of the type of examination to which the licensee must submit.
- b. The name and address of the examiner or of the evaluation or treatment facility that the board has identified to perform the examination on the licensee.
- c. The time period in which the licensee must schedule the required examination.
- d. The amount of time which the licensee has to complete the examination.
- e. A requirement that the licensee sign necessary releases for the board to communicate with the examiner or the evaluation or treatment facility.
- f. A requirement that the licensee cause a report of the examination results to be provided to the board within a specified period of time.
- g. A requirement that the licensee communicate with the board regarding the status of the examination.
- h. A concise statement of the facts relied on by the board to order the evaluation.

134.6(2) Alternatives. Following issuance of the examination order, the licensee may request additional time to schedule or complete the examination or may request the board to approve an alternative examiner or treatment facility. The board in its sole discretion shall determine whether to grant such a request.

134.6(3) Objection to order. A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. On judicial review of a board decision in a contested case involving an objection to an examination order, the case will be captioned in the name of Jane Doe or John Doe to maintain the licensee's confidentiality.

134.6(4) Closed hearing. Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(1).

134.6(5) Order and reports confidential. An examination order, and any subsequent examination reports issued in the course of a board investigation, are confidential investigative information pursuant to Iowa Code section 272C.6(4).

134.6(6) Admissibility. In the event the licensee submits to evaluation and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the examining physicians' or health care providers' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

134.6(7) *Failure to submit.* Failure of a licensee to submit to a board-ordered mental, physical, or clinical competency examination or to submit to alcohol or drug screening constitutes a violation of the rules of the board and is grounds for disciplinary action.

These rules are intended to implement Iowa Code chapters 147, 152C, and 272C.

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