

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 “masseuse,” 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.