

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

**Proposing rulemaking related to discipline
and providing an opportunity for public comment**

The Board of Massage Therapy hereby proposes to rescind Chapter 134, “Discipline for Massage Therapists,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 147.76, 152C.3, 272C.3, 272C.4, and 272C.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 147, 152C and 272C.

Purpose and Summary

Proposed Chapter 134 provides protection to both the public and licensees because it publicly defines the need to obtain a massage therapy license in order to practice massage therapy, hold oneself out to the public as a massage therapist, or employ someone to provide these services, as directed in Iowa Code section 152C.4. Iowans have the ability to submit a complaint of unlicensed practice to the Board, which can then investigate the allegation and impose civil penalties, ensuring that the public is protected and licensed massage therapists are not competing against unlicensed individuals.

The 19 boards in the legacy Department of Health and Human Services (HHS) Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only the civil penalties that may be imposed when persons imply or represent themselves, or an individual they employ, to be massage therapists when they are not licensed. This is unique to the massage therapy profession and excluded from the general disciplinary chapter.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 645—Chapter 18.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on January 31, 2024. Comments should be directed to:

Jessica O'Brien
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.281.6352
Email: jessica.o'brien@dia.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 30, 2024 10:30 a.m.	6200 Park Avenue Des Moines, Iowa Video call link: meet.google.com/jji-jaoj-uqy Or dial: 1.904.330.1060 PIN: 744 558 427#
January 31, 2024 10:30 a.m.	6200 Park Avenue Des Moines, Iowa Video call link: meet.google.com/jji-jaoj-uqy Or dial: 1.904.330.1060 PIN: 744 558 427#

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking. In an effort to ensure accuracy in memorializing a person's comments, a person may provide written comments in addition to or in lieu of oral comments at a hearing.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 645—Chapter 134 and adopt the following **new** chapter in lieu thereof:

CHAPTER 134
DISCIPLINE FOR MASSAGE THERAPISTS

645—134.1(152C) Civil penalties.

134.1(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 that 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 \$1,000 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 that 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.

134.1(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 that 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 \$1,000 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 that 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.

134.1(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.

134.1(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.

134.1(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.

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