

**BEFORE THE BOARD OF MASSAGE THERAPY EXAMINERS
STATE OF IOWA**

IN THE MATTER OF:)	CASE NO.: 02-012
)	
NATHAN KIRBY)	
9929 West Madison)	NOTICE OF POSSIBLE ACTION
Washington, Iowa 52353)	AND OPPORTUNITY FOR HEARING
)	
RESPONDENT)	

YOU ARE HEREBY NOTIFIED that the Iowa Massage Therapy Examiners Board (Board) intends to issue an order pursuant to Iowa Code section 152C.4(1) (2003) imposing a civil penalty in an amount not to exceed \$1,000 per offense per day, based on the following allegations:

1. Respondent Nathan Kirby is an individual residing in the state of Iowa.
2. Respondent performed massage therapy as it is defined by Iowa Code section 152C.1(3) under his own name as well as under the names "Nathan Kirby Massage" and "The Healing Touch."
3. Respondent advertised his services as a massage therapist for compensation in a number of yellow page advertisements and newspapers.
4. Respondent is not licensed to provide massage therapy pursuant to Iowa Code chapter 152C.
5. Only persons qualified by the laws of Iowa and licensed pursuant to Iowa Code chapter 152C may provide massage therapy for compensation.
6. The practice of "massage therapy" includes the performance for compensation of massage, myotherapy, massotherapy, bodywork, bodywork

therapy, or therapeutic massage including hydrotherapy, superficial hot and cold applications, vibration and topical applications, or other therapy which involves manipulation of the muscle and connective tissue of the body, excluding osseous tissue, to treat the muscle tonus system for the purpose of enhancing health, muscle relaxation, increasing range of motion, reducing stress, relieving pain, or improving circulation. Iowa Code §152C.1(3).

7. Respondent violated Iowa Code section 152C.5 by practicing massage therapy without a valid license.

8. As authorized by Iowa Code section 152C.4, the Board may, by order, impose a civil penalty upon a person who practices as a massage therapist without a license.

9. In determining the amount of a civil penalty, the board may consider the following:

- a. Whether the amount imposed will be a substantial economic deterrent to the violation;
- b. The circumstances leading to or resulting in the violation;
- c. The severity of the violation and the risk of harm to the public;
- d. The economic benefits gained by the violator as a result of noncompliance;
- e. The welfare or best interest of the public.

10. Pursuant to section 152C.4(2), you have the right to request a hearing in this matter prior to the issuance of an order or citation within thirty

days of the date this Notice is mailed through restricted, certified mail. Your request for a hearing must be made in writing to: Roxanne Sparks, Board Administrator, Lucas State Office Building, 5th Floor, Des Moines, Iowa 50319-0075.

11. If a request for hearing is not timely made within thirty (30) days of issuance of this Notice, the Board may issue an order or citation pursuant to Iowa Code section 152C.4(1).

12. If a request for a hearing is timely made, a separate notice of hearing shall issue. The Board will conduct a public hearing in accordance with Iowa Code chapter 17A (2003). If the Board concludes that the evidence establishes the allegations by a preponderance of the evidence, the Board may impose a civil penalty in an amount not to exceed \$1,000 for each offense. Each day of a continued violation after an order or citation by the Board constitutes a separate offense, with a maximum penalty of \$10,000.

13. If a civil penalty is imposed and not paid within thirty days of entry of the order, the Board shall notify the Attorney General and the Attorney General may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs.

This Notice of Possible Action and Opportunity for Hearing is approved by the board on June 3, 2003.