At the recent NRPA Congress for Recreation and Parks in Minneapolis, numerous educational sessions attested to the increased sophistication of the recreation and parks profession, particularly in the areas of therapeutic recreation and leisure counseling. One such session described “an activity therapy program based on the psychosocial and psycho-educational models with therapeutic recreation as the primary focus in the treatment milieu.” Another presented the use of “fantasy as a proven effective therapeutic intervention technique in counseling settings.” Greater sophistication in such therapeutic techniques should, however, be accompanied by an appreciation of state laws which may regulate counseling activities.

Most states have statutes which require certification or licensing before an individual engages in any activity for a fee which could be loosely construed as the practice of psychology. For example, the California business and professions code defines psychotherapy as “the use of psychological methods in a professional relationship to assist a person or persons to acquire greater human effectiveness or to modify feelings, conditions, attitudes, and behavior which are emotionally, intellectually, or socially ineffectual or maladjustive.” Arguably, the administration of “fantasy therapy” or similar counseling techniques for a fee without a license in California may be viewed as unauthorized practice of psychotherapy. Absent an applicable exemption within the specific licensing statute, the leisure therapist or counselor providing such services could be risking criminal prosecution.

Therefore, it would behoove the leisure therapist or counselor, especially the private practitioner or consultant who provides these therapeutic activities, to be well aware of the applicable state licensing and certification statutes. The provisions of such statutes vary from state to state. As a result, permissible activities in one state may be prohibited in another. Further, certification by a particular state or professional society will not necessarily satisfy the specific licensing requirements of another state. In each instance, the professional practitioner must meet the applicable statutory requirements of a given jurisdiction or risk criminal prosecution.

Unauthorized practice of psychotherapy or counseling is a misdemeanor in most states; conviction could result in a $500 to $1,000 fine and/or imprisonment of usually six months to one year for each violation. In addition to criminal prosecution and punishment by fine and imprisonment, most state statutes provide other legal remedies such as injunctive relief, prohibiting further practice without a license, and possibly restitution of fees to clients.

Criminal liability under a state licensing statute exists separate and apart from any potential civil liability for professional malpractice. In addition to criminal prosecution by the state, the unauthorized practitioner risks a civil suit for damages by a dissatisfied client. The plaintiff in such a suit could recover damages for any proven injuries (economic, mental, physical, emotional, or otherwise) attributable to the practitioner’s lack of skill and/or training required by
the licensing statute. Further, the plaintiff could also ask the court for punitive damages to punish the practitioner for engaging in unlicensed activities expressly forbidden by law.

STATES ADOPT APA MODEL

Existing statutes which prohibit the unauthorized practice of psychology tend to follow the model for state legislation developed by the American Psychological Association (APA) in 1955 and updated in 1967. The updated APA legislative model cited herein appeared in the *American Psychologist* (Vol. 22, No. 12, December 1977). The APA model was designed to assist each state “to find an optimal way of handling its unique problems within the legal framework and tradition of its legislature, and at the same time adhere to APA policies.”

The APA model for state licensing statutes is intended to protect the public from the unqualified practitioner who renders psychological services for remuneration, monetary and otherwise. Remuneration is the triggering mechanism for this type of regulatory statute because charlatans and quacks appear most frequently where the client makes payment for services rendered.

With some slight variations in terminology and scope, existing state licensing statutes have adopted the APA’s definition of the practice of psychology. In part, practice of psychology is defined as “rendering to individuals, groups, organizations, or the public any psychological service involving the application of principles, methods, and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, thinking, emotions, and interpersonal relationships; the methods and procedures of interviewing, counseling and psychotherapy; of constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotion, and motivation.

Once an individual engages in any of the above stated activities for remuneration, to avoid potential liability under the applicable state statute, he must either be licensed to practice psychology or be a member of an exempt class as defined in the statute. The APA model recommends exemptions for members of other recognized professions such as clergymen, lawyers, and social workers “doing work of a psychological nature consistent with their training and consistent with any code of ethics of their respective professions.”

The APA model would also exempt “persons employed as psychologists by accredited academic institutions, governmental agencies, research laboratories, and business corporations . . . provided such employees are performing those duties for which they are employed by such organizations, and within the confines of such employment settings.” Existing state statutes have incorporated most of the exemptions recommended by APA.

As noted by the APA committee on legislation, “by wording and implication, present laws cover only the applied activities of psychologists rather than their teaching and research activities . . . since there may be little need to protect the public from the activities of teaching and research within such institutions.” Students and interns in psychology as well as social psychologists are
also exempt under the APA model adopted by most states.

APA LICENSING REQUIREMENTS

Licensure under the APA model, which would permit an individual to engage in the practice of psychology, requires “the doctoral degree from an accredited university or college in a program that is primarily psychological, and no less than two years of supervised experience, one of which is subsequent to the doctoral degree.” The APA model also recognizes an optional assistant or technician category requiring one year of graduate training and experience under a licensed psychologist. APA recommends that such individuals be prohibited from independent practice. Most state licensing statutes reflect the educational/training requirements of the APA model.

As a practical matter, it is highly unlikely that states will engage in a “witch hunt” for unwary and unlicensed practitioners of leisure counseling/therapy. In most instances, states will initiate investigations of alleged licensing violations in response to complaints by disgruntled clients or inquiries from licensed counselors whose professional “turf” and income is threatened by such unauthorized practices.

In criminal cases, states have prosecutorial discretion. In other words, the state’s attorney can decide whether or not to pursue an apparent violation of a licensing statute. Since licensing statutes are designed to protect the general public welfare, the decision to prosecute or not usually turns on the nature and degree of the offense. As a result, the more innocuous violations of these public welfare licensing statutes will oftentimes be ignored. If any official action is taken, the offending party will normally be enjoined from further practice until a license is obtained. However, in most cases, the mere threat of criminal charges usually makes further action by the state unnecessary. Maximum fines and imprisonment are usually reserved for the most outrageous affronts to society.

In exercising prosecutorial discretion, the state’s attorney will be sensitive to statutory “buzz words” in the representations of the unlicensed practitioner. As a result, representations to prospective clients which contain psychological and medical jargon are more likely to be deemed within the scope of proscribed activities regulated by the applicable licensing statutes. Since these state licensing statutes involve misdemeanors, they are more liberally construed than statutes which define more serious felonies. Consequently, a prosecutor will include a wider range of activities under the scope of such statutes.

Although it is highly unlikely that a given leisure counselor or therapist will be prosecuted for unauthorized practice of psychology, the feint spectre of criminal charges and potential civil liability certainly does nothing to enhance the fledgling professionalism of this field. Further, the field of psychology is one of many areas involving state licensing statutes. Many states regulate and license various types of counseling activities (vocational, career, marriage, family, etc.) which could be construed to include various aspects of leisure counseling or therapy. For
example, Arkansas has a statute regulating counseling in general while California has a statute, separate and apart from its “psychology” statute, which specifically addresses family counseling.

Thus, one must consult the business and professions code of the individual state to determine where licensing requirements exist. Any doubts regarding the applicability of state licensing requirements can usually be resolved by consulting the state licensing board or requesting a written opinion from the state’s attorney general.

To avoid potential problems in this area, universities and individuals engaged in the field of leisure counseling should more clearly define the parameters of what appears to be an emerging profession. Once defined, leisure counselors as a group might then approach individual states or professional organizations, such as APA, to resolve any statutory conflicts or professional differences. Meanwhile, practitioners and students of leisure counseling/therapy should certainly familiarize themselves with state licensing requirements in areas closely allied to leisure counseling.

To date, significant progress has been made in at least two states, Georgia and Utah, both of which have enacted certification statutes for therapeutic recreation specialists. Hopefully, this trend will continue in other states and eventually legislation will be enacted to include provisions for the practice of leisure therapy/counseling. Those interested in leisure counseling, however, must keep in mind that greater sophistication and rapid expansion of the field does not occur within a professional vacuum. Invariably, the adoption of a wider range of therapeutic activities and techniques encroaches on the professional “turf” of allied counseling fields. In the final analysis, the ability of leisure counselors to anticipate and dispel these professional suspicions and misunderstandings is probably more important than confronting the unlikely threat of criminal prosecution under a state licensing statute.