State of California
Office of Administrative Law

In re: **California Gambling Control Commission**	**DECISION OF DISAPPROVAL OF REGULATORY ACTION**
Regulatory Action: **Title 04, California Code of Regulations**	**Government Code Section 11349.3**
Adopt sections: 12095, 12097, 12098, 12099 **Amend sections: 12002, 12461** **Repeal sections:**	**OAL Matter Number: 2026-0721-02** **OAL Matter Type: Regular (S)**

SUMMARY OF REGULATORY ACTION

This regulatory action by the California Gambling Control Commission (Commission) proposed to establish new requirements for gambling advertisements that include definitions for "advertisements" and "advertising," informational content and disclosures that must be included in the advertisement, age confirmation requirements for communications directed to particular individuals, and an administrative enforcement process by which the Bureau of Gambling Control evaluates and determines whether advertisements are deceptive and whether to pursue disciplinary action.

On July 21, 2026, the Commission submitted the above-referenced regulatory action to the Office of Administrative Law (OAL) for review. On September 1, 2026, OAL notified the Commission that OAL disapproved the proposed regulatory action pursuant to the Administrative Procedure Act (APA). This Decision of Disapproval of Regulatory Action explains the reasons for OAL's action.

DECISION

OAL disapproved the action because the proposed regulatory changes failed to comply with the clarity standard of Government Code section 11349.1, subdivision (a)(3).

DISCUSSION

The Commission's regulatory action must satisfy requirements established by the part of the APA that governs rulemaking by a state agency. Any regulation adopted, amended, or repealed by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, is subject to the APA unless a statute expressly exempts the regulation from the APA. (Gov. Code, § 11346.) No exemption applies to the present regulatory action under review.

Before any regulation subject to the APA may become effective, the regulation is reviewed by OAL for compliance with the procedural requirements of the APA and the standards for administrative regulations in Government Code section 11349.1. Generally, to satisfy the APA standards, a regulation must be legally valid, supported by an adequate record, and easy to understand. In this review, OAL is limited to the rulemaking record and may not substitute its judgment for that of the rulemaking agency regarding the substantive content of the regulation. This review is an independent check on the exercise of rulemaking powers by executive branch agencies intended to improve the quality of regulations that implement, interpret, and make specific statutory law, and to ensure that the public is provided with a meaningful opportunity to comment on regulations before they become effective.

1. CLARITY STANDARD

In adopting the APA, the Legislature found that the language of many regulations was unclear and confusing to persons who must comply with the regulations. (Gov. Code, § 11340, subd. (b).) Government Code section 11349.1, subdivision (a)(3), requires that OAL review all regulations for compliance with the clarity standard. Government Code section 11349, subdivision (c), defines "clarity" to mean "written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them."

The "clarity" standard is further defined in section 16 of title 1 of the California Code of Regulations (CCR), which provides:

> In examining a regulation for compliance with the "clarity" requirement of Government Code section 11349.1, OAL shall apply the following standards and presumptions:
> (a) A regulation shall be presumed not to comply with the "clarity" standard if any of the following conditions exists:
> (1) the regulation can, on its face, be reasonably and logically interpreted to have more than one meaning; or

(2) the language of the regulation conflicts with the agency's description of the effect of the regulation; or
(3) …
(4) …
(5) the regulation presents information in a format that is not readily understandable by persons "directly affected;" or
(6) …
(b) Persons shall be presumed to be "directly affected" if they:
(1) are legally required to comply with the regulation; or
(2) are legally required to enforce the regulation; or
(3) derive from the enforcement of the regulation a benefit that is not common to the public in general; or
(4) incur from the enforcement of the regulation a detriment that is not common to the public in general.

The following provisions in the Commission's proposed regulatory action do not satisfy the clarity standard.

1.1 Proposed Subsection (d)(1) of Section 12097.

Proposed subsection (d)(1) of section 12097 reads:

> <u>(d) An advertisement must not be deceptive to the public. The Bureau **must consider** the following criteria in determining whether an advertisement is deceptive:</u>
> <u>(1) The advertisement **depicts gambling as a means to become wealthy** or resolve a financial burden. [Emphasis added.]</u>

Subdivision (f) of section 19841 of the Business and Professions Code reads:

> The regulations adopted by the commission shall do all of the following:
> …
> (f) Provide for the disapproval of advertising by licensed gambling establishments that is determined by the department [Bureau] to be deceptive to the public. … Advertisement that appeals to children or adolescents or that **offers gambling as a means of becoming wealthy** is presumptively deceptive. <u>[Emphasis added.]</u>

Proposed subsection (d)(1) is unclear because it presents information in a format that is not readily understandable by persons "directly affected." (Cal. Code Regs., tit. 1, § 16, sub. (a)(5).) The requirement in subsection (d) that the Bureau "must consider" the criteria that follow suggests that the Bureau has discretion in determining whether an advertisement is deceptive even if the listed criteria exist. While subsection (d)(1) is listed as a criterion for the Bureau to "consider," the governing statute identifies as *presumptively* deceptive an advertisement that offers gambling as a means of becoming wealthy. The proposed regulation neither acknowledges this factor as being presumptively deceptive nor identifies standards, considerations, or criteria by which the Bureau could deem the presumption rebutted.

Additionally, subdivision (f) of section 19841 of the Business and Professions Code refers to advertisements that "offer" gambling as a means of becoming wealthy, whereas proposed subsection (d)(1) references advertisements "depicting" gambling as a means of becoming wealthy. As written, it is unclear what "depicts gambling as a means to become wealthy" means in this context. For example, as a commenter observed during the second 15-day public comment period:

> Advertising that depicts gambling as a means of financial improvement is not a usual category of deceptive advertising. Until now, it has not been a subject actionable at law under California advertising law and therefore there is an absence of precedential guidance as to how this criterion is to be applied. Is showing a person winning money to be prohibited, or is it prohibited only if the amount of money is sufficient for a person to be "wealthy"?
>
> For example, it has long been the practice to show pictures of the winner of a large poker tournament with a lot of chips or cash. During the World Series of Poker, often when the tournament is down to two players, they place cash bundles on the table and then take a picture of the winner. Is that a violation? In other words, can we depict people winning money, for example a large jackpot prize, but just not show them reclining on a yacht? Whatever position the Bureau takes, it will be new.

Absent clear standards, conditions, or criteria upon which the regulated public can rely for satisfying the "depicts gambling as a means to become wealthy" standard, it is unclear what standard the public is required to comply with and what steps the public may take to ensure compliance with the regulation and avoid potential disciplinary proceedings.

1.2 Proposed Subsection (d)(2) of Section 12097.

Proposed subsection (d)(2) of section 12097 reads:

> (d) An advertisement must not be deceptive to the public. The Bureau must consider the following criteria in determining whether an advertisement is deceptive:
>
> …
>
> (2) The advertisement targets or appeals to children or adolescents or encourages persons under 21 years of age to engage in controlled gambling. Examples of this include, but are not limited to: …

Proposed subsection (d)(2) is unclear because it presents information in a format that is not readily understandable by persons "directly affected." (Cal. Code Regs., tit. 1, § 16, sub. (a)(5).) The requirement in subsection (d) that the Bureau "must consider" the criteria that follow suggests that the Bureau has discretion in determining whether an advertisement is deceptive, even if the listed criteria exist. While proposed subsection (d)(2) is listed as a criterion for the Bureau to "consider," subdivision (f) of section 19841 of the Business and Professions Code identifies as *presumptively* deceptive an advertisement that targets or appeals to children or adolescents or encourages persons under 21 years of age to gamble. The proposed regulation neither acknowledges this factor as being presumptively deceptive nor identifies standards, considerations, or criteria by which the Bureau could deem the presumption rebutted.

1.3 Proposed Subsection (a) of Section 12099.

Proposed subsection (a) of section 12099 reads:

> (a) If the Bureau determines an advertisement is deceptive in accordance with this article, the Bureau may issue a notice of deceptive advertising to the cardroom business licensee or TPPPS business licensee pursuant to Section 12006....

Proposed subsection (a) is unclear because it presents information in a format that is not readily understandable by persons "directly affected." (Cal. Code Regs., tit. 1, § 16, sub. (a)(5).) The use of "may" without standards, considerations, or criteria makes it unclear to the public under what circumstances the Commission expects the Bureau to initiate the process leading to disapproval by issuing a notice of deceptive advertising.

1.4 Proposed Subsections (c) and (d) of Section 12099.

Proposed subsections (c) and (d) of section 12099 read as follows:

> (c)If the cardroom business licensee or TPPPS business licensee does not submit timely support to the Bureau pursuant to subsection (b), the **Bureau will issue a notice of disapproval** of the deceptive advertisement within 30 calendar days.
> (2)…
> (A) If the Bureau upholds or amends its determination, it will issue a **notice of disapproval** of the deceptive advertisement.
> (B) If the Bureau vacates its determination, it will not issue a **notice of disapproval**.
> (d) Following the issuance of a **notice of disapproval**, the Bureau may proceed with taking action under Business and Professions Code sections 19930 and/or 19931, as it deems appropriate.
> [Emphasis added.]

Proposed subsections (c) and (d) are unclear because they present information in a format that is not readily understandable by persons "directly affected." (Cal. Code Regs., tit. 1, § 16, sub. (a)(5).). Absent the Bureau's discretionary decision to pursue formal disciplinary proceedings pursuant to Business and Professions Code sections 19826, 19930, and 19931, the notice of disapproval represents the final document with respect to a determination of deceptive advertising under the proposed article. However, the proposed regulation provides no information to apprise the public as to the content of the notice or the consequences that derive from its issuance. Additionally, the use of "may" without standards, considerations, or criteria makes it unclear whether the Commission is proposing to authorize the Bureau to take a particular action, and if so, under what circumstances, or whether this provision is merely informative and therefore unnecessary.

1.5 Proposed Subsection (e) of Section 12099, First Sentence.

Proposed subsection (e) of section 12099 reads:

> (e) **Violation** of this section occurs at the time a deceptive advertisement is published or disseminated. Once a **violation** occurs, subsequent remedial actions cannot eliminate it but may be considered a mitigating factor regarding any imposition of discipline. [Emphasis added.]

The first sentence of proposed subsection (e) is unclear because it can reasonably and logically be interpreted to have more than one meaning and it presents information in a format that is not readily understandable by persons "directly affected." (Cal. Code Regs., tit. 1, § 16, subs. (a)(1) and (a)(5).). The first sentence of proposed subsection (e) establishes that a violation occurs "at the time a deceptive advertisement is published or disseminated" but does not address how the number of violations would be determined.

In this regard, public comment submitted during the second 15-day public comment period highlights the existence of multiple reasonable meanings by posing a number of hypotheticals that could lead to different numbers of violations based on the Bureau's discretion, as follows:

> <u>The Counting Problem</u>. The regulation currently does not explain how the number of violations will be counted. This is a critical problem due to how advertising is disseminated. Consider these examples:
> 1) A radio advertisement with a content issue is broadcast 50 times. Is this one violation or 50? Each violation of the regulation has a potential penalty of $5,000. (Disciplinary Reg. 12566 (a)(3) (Cal. Code of Reg. Title 4, Div. 18, Chapter 10.)
> 2) The same audio ad is streamed to one person at a time on Pandora, Spotify or through podcasts to 150,000 listeners. How many violations have there been?
> 3) Five thousand followers see a social media post from the cardroom, one at a time. Two hundred people re-post the original post giving the post another 5,000 views. If there is a content issue, how many violations have there been: (A) One, (B) 5,000, or (C) 10,000?
> 4) A licensee places a banner advertisement with a digital advertising aggregator who bids on website banner ad spaces. The advertisement has five creative versions with slight differences, and appears on 80 different websites. The banner ad loads separately for each unique website user. The advertiser receives a report that monthly there were 100,000 individual views across all the sites. This goes on for 12 months. If there is an issue, how many violations are there: (A) One, (B) Five, (C) 80 or (D) 1.2 million?
> 5) A television commercial is broadcast only one time to an audience of 75,000 persons. The same video advertisement is streamed to 75,000 persons. One person at a time views the streamed advertisement. How many violations have there been, one or 75,000?
>
> Leaving the number of violations unclear and to the Bureau's unconstrained discretion is not only unwise, but also conflicts with

> prior Commission practice and threatens First Amendment rights. The potential penalties can bankrupt the advertiser, and hundreds or thousands of violations may be counted even before the licensee receives the first Bureau notice.

Without further information, how a violation is charged is subject to multiple reasonable interpretations by the Bureau, with significant impacts on the public as to the amount of fines that may result from disciplinary action arising from a single advertisement.

1.6 Proposed Subsection (e) of Section 12099, Second Sentence.

Proposed subsection (e) of section 12099 reads:

> <u>(e) Violation of this section occurs at the time a deceptive advertisement is published or disseminated. Once a violation occurs, subsequent remedial actions cannot eliminate it but may be considered a mitigating factor regarding any imposition of discipline.</u>

The second sentence of proposed subsection (e) is unclear for two reasons.

First, the second sentence of proposed subsection (e) is unclear because it can reasonably and logically be interpreted to have more than one meaning. (Cal. Code Regs., tit. 1, § 16, sub. (a)(1).) The second sentence of the subsection does not specify whether it is the Commission or the Bureau, or both, that will consider remedial acts as a possible mitigating factor for imposition of discipline.

Second, the second sentence of proposed subsection (e) is unclear because it presents information in a format that is not readily understandable by persons "directly affected." (Cal. Code Regs., tit. 1, § 16, sub. (a)(5).) The use of "may" without standards, considerations, or criteria makes it unclear to the public the circumstances under which the Commission or the Bureau, or both, would consider or decline to consider an alleged violator's remedial actions as a mitigating factor for any eventual discipline sought or imposed.

1.7 Proposed Subsection (a) of Section 12097.

Proposed subsection (a) of section 12097 reads:

> <u>(a) Advertisements must present all of the required information pursuant to this section in a clear and conspicuous manner. Clear and conspicuous means the required information is legible and readable or audible and intelligible, as applicable.</u>

Proposed subsection (a) is unclear because it presents information in a format that is not readily understandable by persons "directly affected." (Cal. Code Regs., tit. 1, § 16, sub. (a)(5).) The phrase "clear and conspicuous" is defined in subsection (a) as "legible and readable or audible and intelligible." The definition "legible and readable or audible and intelligible" appears subjective, making it unclear to the regulated public how to satisfy the "clear and conspicuous" standard. Absent clear standards, conditions, or criteria upon which the regulated public can rely for satisfying the "legible and readable or audible and intelligible" standard, it is unclear what standard the public is required to comply with and what steps the public may take to ensure compliance with the regulation and avoid potential disciplinary proceedings. If the Commission has standards in mind regarding what constitutes "legible and readable or audile and intelligible," such as font size, contrast, required distance for readability, or speed of speech for intelligibility, that information should be specified in regulation.

CONCLUSION

For the foregoing reasons, OAL disapproved the above-referenced regulatory action. Pursuant to Government Code section 11349.4, subdivision (a), the Commission may resubmit revised regulations within 120 days of its receipt of this Decision of Disapproval of Regulatory Action. A copy of this Decision will be emailed to the Commission on the date indicated below. The Commission must make any substantive regulatory text changes, which are sufficiently related to the originally noticed text, available for public comment for at least 15 days pursuant to subdivision (c) of Government Code section 11346.8 and section 44 of title 1 of the CCR. Any comments containing objections or recommendations must be summarized and responded to in the Final Statement of Reasons, and where appropriate, the Commission must also revise the existing responses to comments to reflect the changes to the regulation text. The Commission must resolve all other issues raised in this Decision of Disapproval of Regulatory Action prior to the final approval by the Commission of the redrafted regulations and resubmittal of this regulatory action.

Date: September 8, 2026

_____________/s/_________________
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