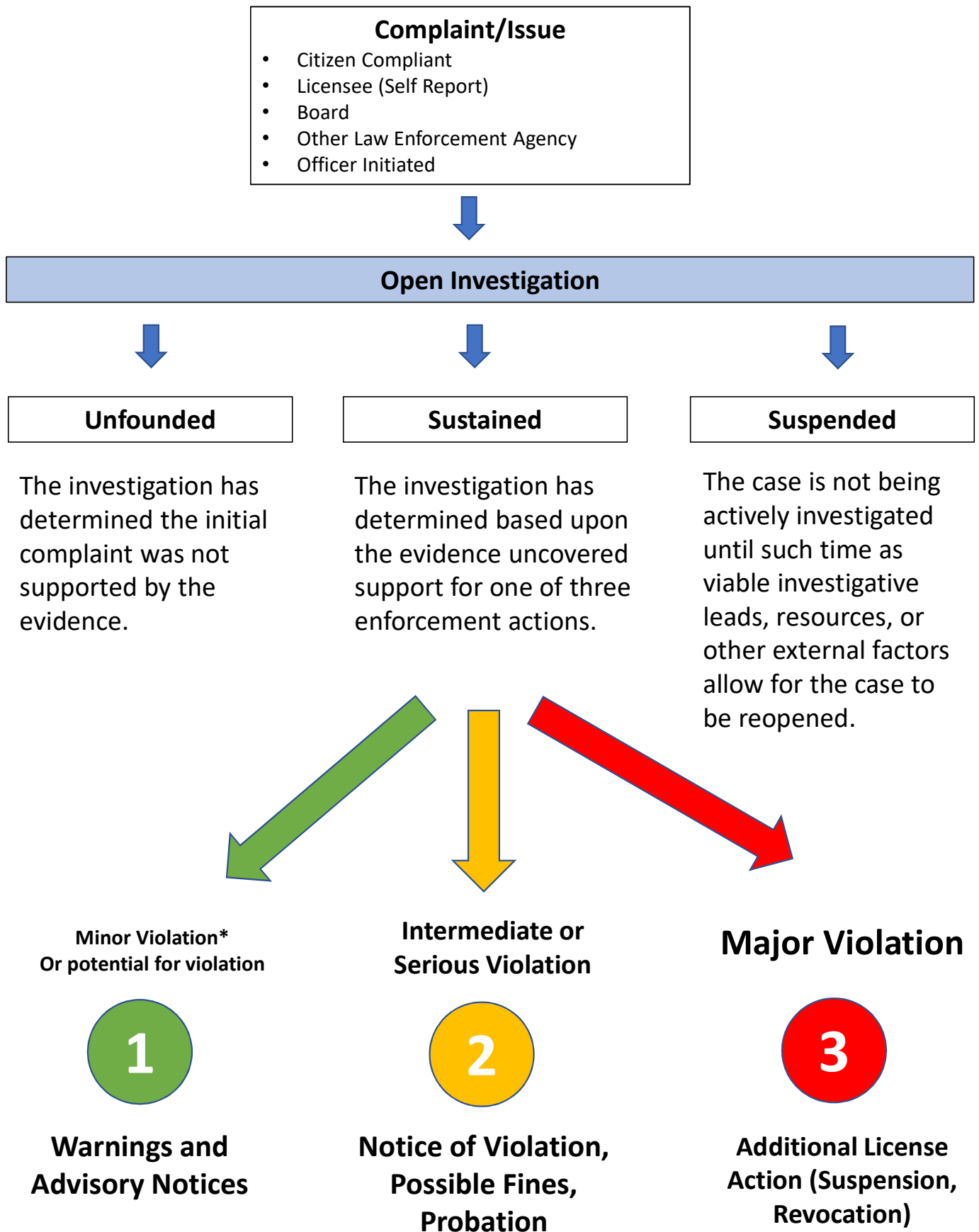


AMCO Investigations and Violation Enforcement Action Process

Enforcement of Title 4 – Alcoholic Beverages



AMCO Investigations and Enforcement Action Process

Enforcement of Title 4 – Alcoholic Beverages

Minor Violation or Potential for Violation*

1

Verbal Warning

Since a notice of violation is issued under the discretion of investigative personnel under 3 AAC 304.525(a)(1)(D), investigative personnel may use discretion and issue lesser enforcement actions including a verbal warning (consider amending 3 AAC 304.525 to include it as a form of communication with licensees). Verbal acknowledgement of concern to the licensee and requesting compliance. Used in the most minor and easily rectifiable of circumstances.

- Verbal Warning is documented
- Verification of compliance
- Statistics kept for Enforcement performance measurements
- Not part of the licensee's record (include in regulation)
- No board action required

Written Warning (Advisory Notice)

Under 3 AAC 304.525(a)(2) an advisory notice may be issued when an incident occurs or a defect is identified that could result in a violation of statute, regulation, or municipal ordinance. The advisory notice is written. A notice of inspection or written advisory is issued in compliance with 3 AAC.525(a)(2). It will cite applicable statute, regulation, ordinance, or board order and will include the time in which a correction, if any, is required. The advisory notice and final actions by the licensee to rectify the issue will be documented and will become a part of the permanent historical record of the licensee. An advisory notice does not go before the board, unless the licensee requests it does under 3 AAC 304.525(b) or it is elevated to a notice of violation because of noncompliance.

- A written warning
- Verification of compliance
- Added to the record of the licensee
- No board action required unless requested by the licensee

DONE

Compliance? - YES

DONE

Non-compliance or Repeated Violations?

Serious Violation

2

AMCO Investigations and Enforcement Action Process

Enforcement of Title 4 – Alcoholic Beverages

Intermediate or Serious Violation -- Notice of Violation -- Fine and Probation Recommendation* (regulatory clarifications required for process)

2



Notice of Violation (N.O.V.)

Under 3 AAC 304.525(a)(1) a notice of violation is intended to be an informal means of communicating to a licensee that a violation of a statute, regulation, or municipal ordinance might have occurred or might be occurring on the licensed premises. Under 3 AAC 304.525(a)(1)(D), investigative personnel have discretion to issue an N.O.V. and the Director has discretion to dismiss it. In general, as compared to an advisory notice, an N.O.V. will cover more serious issues in which the circumstances dictate written and formal action consideration by the board against a licensee. The requested remedy may be monetary, or probationary. This intermediate step is used when the investigative personnel and director are not seeking license revocation or suspension. An N.O.V., along with a written complaint supporting the allegations, is served to the licensee under 3 AAC 304.525(1)(A). The Board still has full authority to elevate the requested remedy for grounds identified in AS 04.11.370, however, if it does so, compliance with 3 AAC 304.535 is required.

The Notice of Violation packet will include the following:

- A Notice of Violation(s)
- [A written complaint narrative to include:](#)
 - A narrative describing the circumstances of the violation(s) and supported by a preponderance of the evidence or a probable cause statement.
 - A description of applicable statutes, regulations, or orders
 - Prior violations or criminal history of the licensee and/or licensed premises
 - Recommendations of fines or probation
 - Signed by the investigating officer
- Verifiable service of the Notice of Violation upon the licensee
- A description of how the licensee may contest the N.O.V.

N.O.V. with Documentation Served on the Licensee



Request to be heard before Director



No Request

Under 3 AAC 304.525(a)(1)(B), a licensee may request to appear before the Director. The licensee shall respond either orally or in writing to the N.O.V. The Director and licensee may propose a non-binding penalty to present to the Board.

- Agreement to accept the N.O.V. and penalty
- No Agreement
- Dismissal by Director



N.O.V. Consideration before the Board

[Set before the board on a Violations Hearing section of the agenda during a regular board meeting.](#)

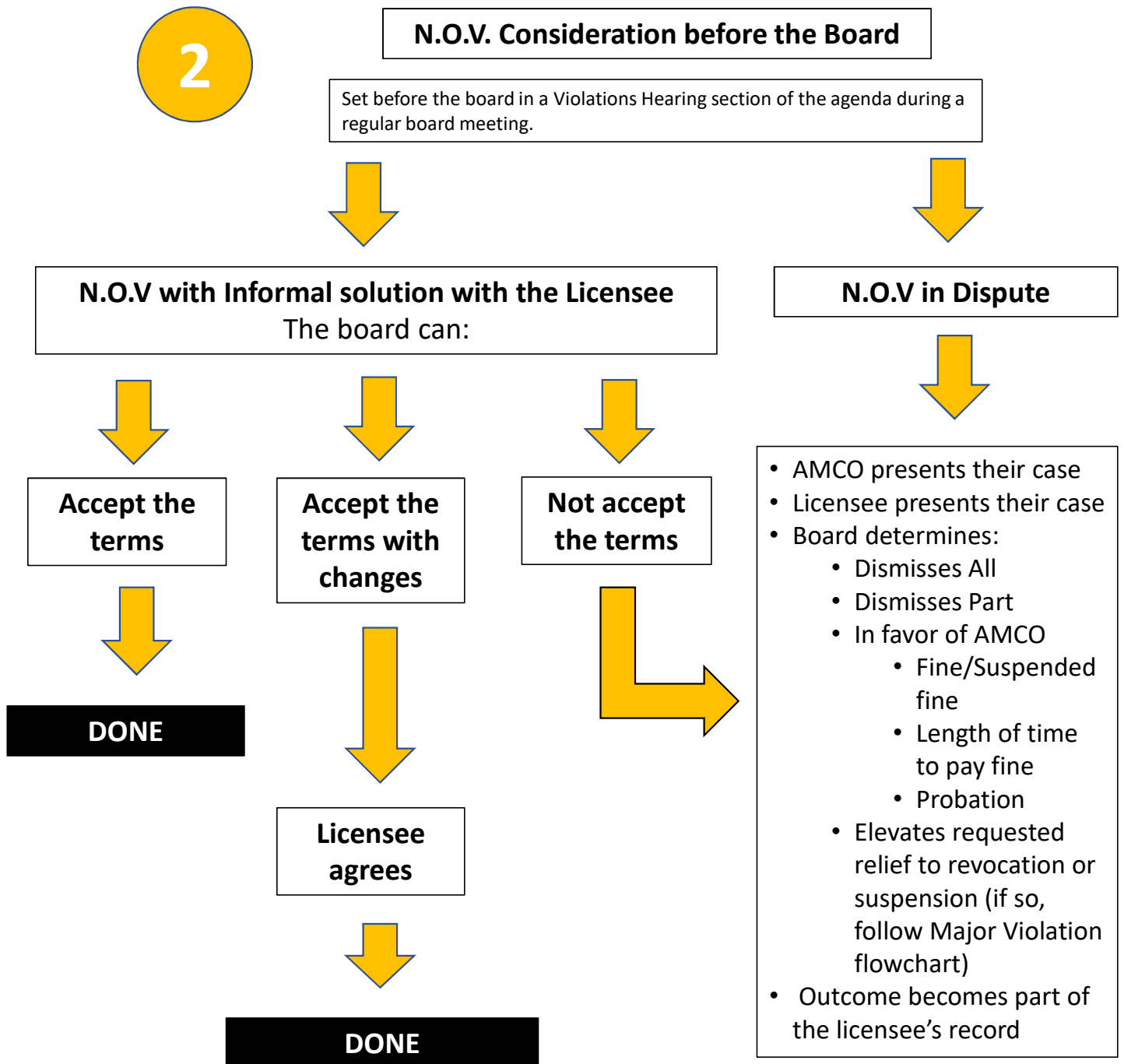
The N.O.V., supporting documentation, licensee's response, along with a proposed fine, suspension of fine, or probationary period signed by the AMCO Director, licensee potential acceptance or rejection of same for board consideration.



AMCO Investigations and Enforcement Action Process

Enforcement of Title 4 – Alcoholic Beverages

Intermediate or Serious Violation (Fine and/or Probation Recommendation)



*Note. Appeal rights of sanctions less than revocation or suspension not clear. Clarify in regulation. MCB regulations provide:
Under 3 AAC 306.835 and 3 AAC 306.845(a), except as provided under 3 AAC 306.825(summary suspension) or 3 AAC 306.830(seizure) a person aggrieved by an action of the director, an enforcement agent, or an employee of the board may request a hearing in compliance with AS 44.62.390 by filing a notice of defense. The board may refer the matter to a hearing before the OAH in compliance with AS 44.62.330 – AS 44.62.630 (APA)

AMCO Investigations and Enforcement Action Process

Enforcement of Title 4 – Alcoholic Beverages

Major or Repeated Violations -- License Suspension or Revocation Sought

3



Accusation

*Note. Also consider referral for criminal prosecution to appropriate authority

- Under AS 04.11.510(c), unless the grounds for the suspension or revocation are under AS 04.11.370(a)(4), board proceedings to suspend or revoke a license shall be conducted in accordance with AS 44.62.330 - AS 44.62.630 (Administrative Procedure Act). This means that the licensee is entitled to a hearing and the hearing is initiated by filing an accusation.
- The Accusation must will include a [signed, written statement of](#)
 - Charges setting out in ordinary and concise language the acts or omissions with which the respondent is charged
 - A description of applicable statutes, regulations, or orders that the respondent is alleged to have violated
 - Prior violations or criminal history of the licensee and/or licensed premises
- If the grounds for suspension or revocation is under AS 04.11.370(a)(4), the licensee is not entitled to a notice and hearing on the merits, but is entitled to a notice and hearing of what administrative sanction to impose under AS 04.16.180



Accusation Served on the Licensee in compliance with AS 44.62.380

- Served personally or by certified mail
- Include a Notice of Defense
- Notice of Opportunity to be heard informally under AS 04.11.510(c)



Request to be heard informally before Director or Board

Unless the grounds for suspension or revocation are under AS 04.11.510(c), the licensee may request an informal conference with the director or board within 10 days after the accusation is served. Doing so tolls the time for filing a notice of defense



If informal conference is with Director, get proposed and accepted resolution to the Board for review and approval. If informal conference is with the board and the Board and licensee agree to the resolution, document the same in meeting and in Licensee's file.



DONE



No Request or No Resolution



Licensee files Notice of Defense. Case proceeds before the OAH



Appeals of upheld final decisions of revocation or suspension to the superior court under AS 04.11.560(b)