



MEMORANDUM

TO: Alcohol Control Board

DATE: June 11, 2021

FROM: Glen Klinkhart, Director

RE: ABC Enforcement Action Process Regulations Project

Over the past year AMCO and the board has begun to create series of processes and procedures for the Enforcement Unit by creating board supported Enforcement Principles, Policies & Procedures, and an Enforcement Action Process. The Enforcement Action Process (see attached slides in pdf format) is an attempt to streamline, clarify, and codify what happens to a licensee who may have violated a regulation or a statute. Using a proposed fine schedule from the Title 4 rewrite legislation, the process is designed to be fair, consistent, and easier for the officers, the licensees, and the board to quickly and equitably act in regard to violations.

I describe this action process like a more familiar “traffic court” process but for the ABC board. When a violation is reported or observed by an enforcement officer the officer should have several options at their disposal. The officer has some discretion and may issue a verbal or a written warning. If the minor violation is remedied and the licensee is back in compliance that should be the end of it. If the violation is not fixed or is a serious enough violation the officer may issue a formal accusation. That accusation is a “ticket” which includes the basic facts of the case and a fine from the fine schedule. The licensee may choose to come into compliance, pay the fine, and that would be where the issue ends. The licensee would also have the due process to protest the accusation before the board where the board could hear both sides of the issue and may find the accusation and fine appropriate, not appropriate, and may rule to void the accusation altogether.

In order to move forward with such an action process, Ms. Wilson has looked at the process chart(s) the board approved and has determined that there are several areas where the board may wish to address in regulations in order to make the process work as described.

Recommended Enforcement Action Regulatory Changes - ABC Board

Slide One: Warnings and Written Warnings/Advisory Notices - Expand authority under 3 AAC 304.505 to make references to both and to potentially describe and define minor, intermediate, and serious violations.

Slide Two: The authority to issue something less than a written warning/advisory notice is implied. Consider making authority to provide verbal warnings expressed.

Slide Three: The description of a Notice of Violation as a recourse for intermediate or serious violations does not comport with the description of an N.O.V. in 3 AAC 304.525(a)(1). An N.O.V. in regulations can be issued even for events that “might have occurred.” Description of what an N.O.V. must include must also be codified and/or used only as a notice or codify the use of an accusation rather than an N.O.V. for intermediate and serious violations.

Informal conferences with the director are mandatory under 3 AAC 304.525(a)(1)(B). Consider permitting letting the director defer those conferences if he or she thinks the informal conference remedy should go directly to the board.

Slide Four: The Action Process fits under the current regulations but may consider making these specifically identified courses of action expressed. Also clarify Respondent’s appeal rights of sanctions less than revocation or suspension are not clear.

Slide Five: Informal conferences with the director are mandatory under AS 04.11.510(c). Consider permitting letting the director defer those conferences if he or she thinks the informal conference remedy should go directly to the board.

Additional Considerations:

Although case law supports summary suspension in cases of immediate harm to the public, the board may consider creating a regulatory provision on how that would proceed. See Marijuana Control Board regulation of summary suspension remedy at 3 AAC 306.825 as an example.

Any other items we have missed in order to make the Enforcement Action Process work as designed.

The Director and the Staff Recommends:

The board open up a regulatory project to address the issues raised by Ms. Wilson and discuss a timeline by which the board would like to proceed with moving forward.

A handwritten signature in black ink, appearing to read 'Glen Klinkhart', with a stylized star-like flourish at the end.

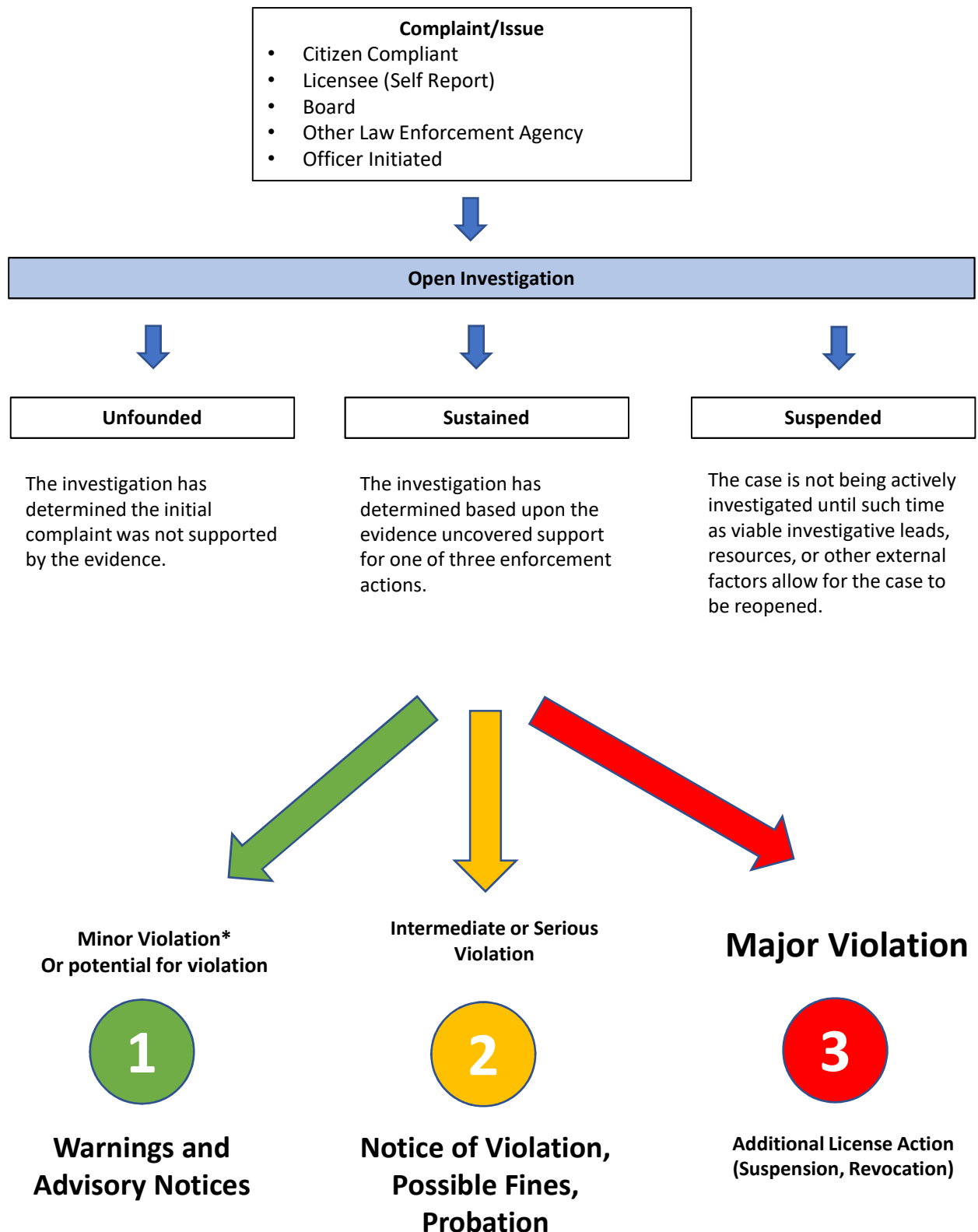
Glen Klinkhart

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AMCO Investigations and Violation Enforcement Action Process

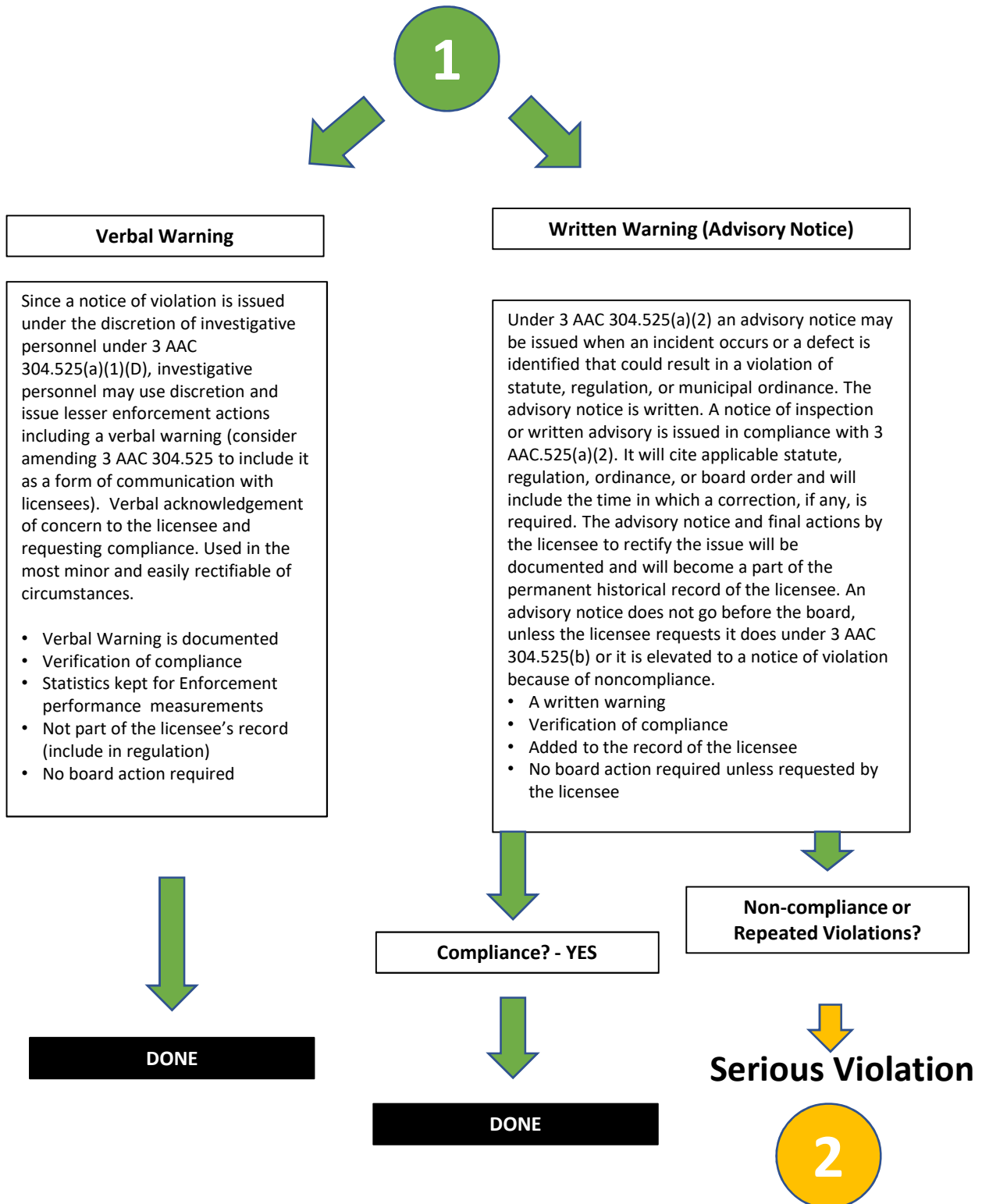
Enforcement of Title 4 – Alcoholic Beverages



AMCO Investigations and Enforcement Action Process

Enforcement of Title 4 – Alcoholic Beverages

Minor Violation or Potential for Violation*



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.](#)

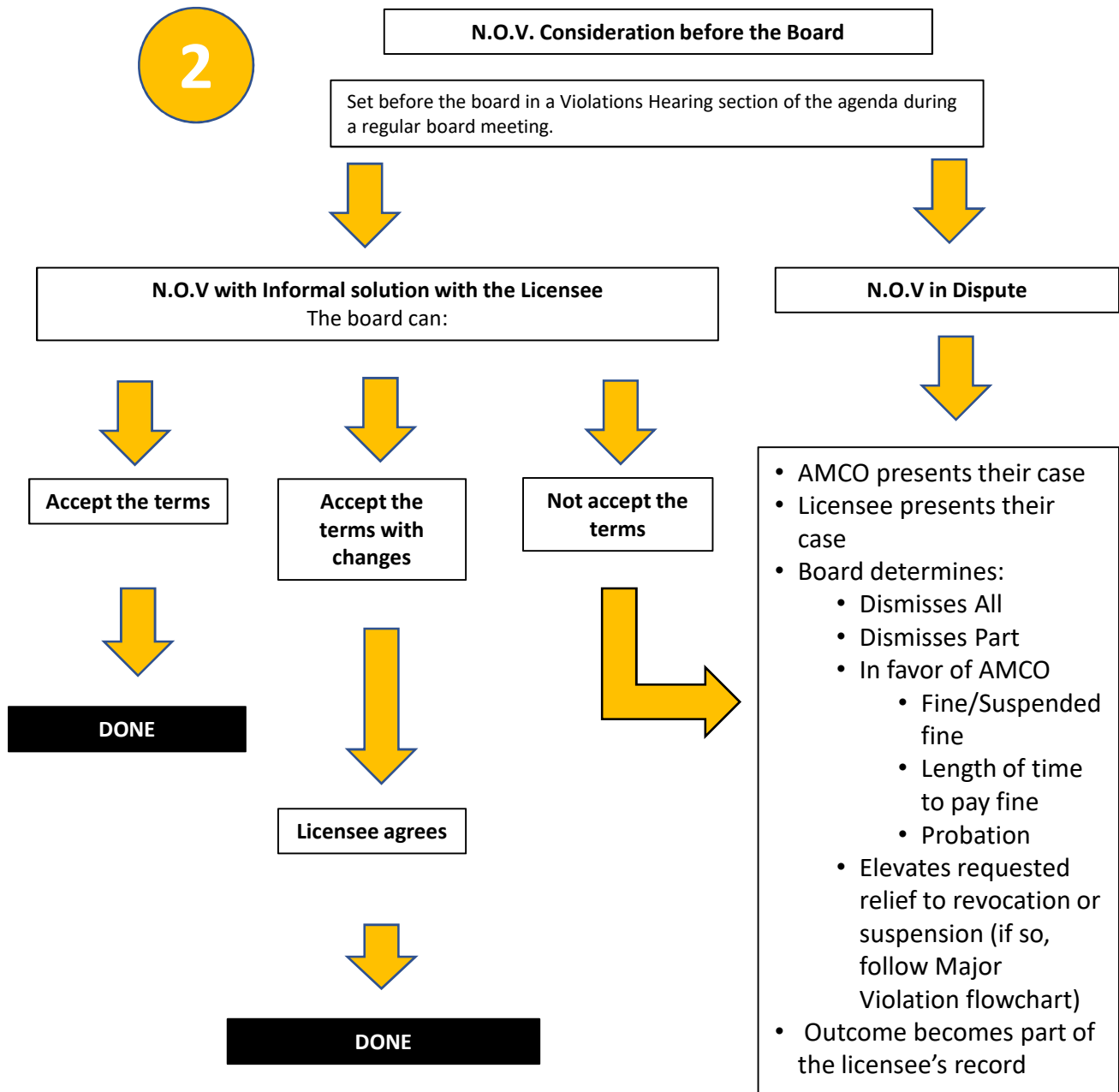
The N.O.V., supporting documentation, licensee's response, along with a proposed fine, suspension of fine, or probationary period signed by the AMCO Director, licensee potential acceptance or rejection of same for board consideration.



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)