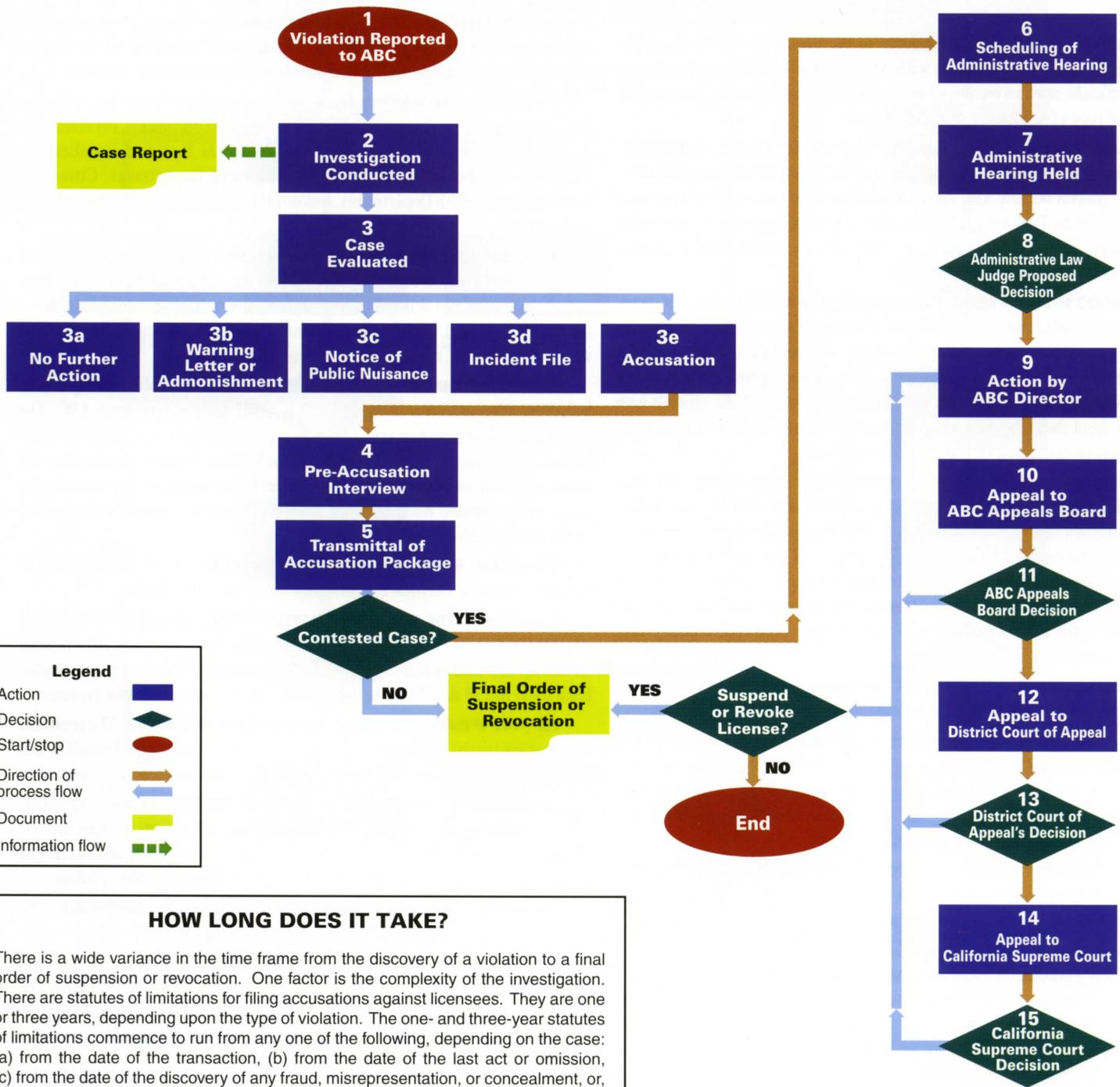


**ALCOHOLIC BEVERAGE LICENSE—DISCIPLINARY PROCESS**



**Legend**

- Action
- Decision
- Start/stop
- Direction of process flow
- Document
- Information flow

**HOW LONG DOES IT TAKE?**

There is a wide variance in the time frame from the discovery of a violation to a final order of suspension or revocation. One factor is the complexity of the investigation. There are statutes of limitations for filing accusations against licensees. They are one or three years, depending upon the type of violation. The one- and three-year statutes of limitations commence to run from any one of the following, depending on the case: (a) from the date of the transaction, (b) from the date of the last act or omission, (c) from the date of the discovery of any fraud, misrepresentation, or concealment, or (d) from the date a criminal conviction becomes final.

**Investigation and Filing of Accusation (Steps 2–5)**

—**Accusations to be filed within one year.** Beer price posting and marketing regulations; labels and containers; free goods; habitual drunkard/obviously intoxicated person; unlawful possession on licensed premises; substitution of brands; destroying serial numbers; exterior signs; obnoxious signs/retail operating standards; alcoholic content of beer; retail hours of sale; permitting consumption during restricted hours, wholesale deliveries; sales to, or permitting consumption by, minors; employment of minors; advertising encouraging minors to drink; or minors in public premises.

—**Accusations to be filed within three years.** Sales without a license; misuse of license privileges; license privileges (club or veterans' club); selling narcotics or soliciting drinks on premises; tied-house restrictions; disorderly house; or false returns and records.

**Hearing and Appeals (Steps 6–15)**

|   |                  |
|---|------------------|
| –Scheduling of Administrative Hearing       | 60 days          |
| –Administrative Law Judge Proposed Decision | 30 days          |
| –Action by ABC Director                     | 3–10 days        |
| –Appeal to ABC Appeals Board                | 40 days          |
| –Appeals Board Decision                     | 120 days         |
| –Appeal to District Court of Appeal         | 30 days          |
| –District Court of Appeal's Decision        | No time mandated |
| –Appeal to California Supreme Court         | 30 days          |
| –Supreme Court Decision                     | No time mandated |

## INTRODUCTION

State and local law enforcement and licensees all play an important role in preventing alcohol-related problems in our communities. The Department of Alcoholic Beverage Control (ABC) licenses and regulates the alcoholic beverage industry. The goal of ABC's disciplinary procedures is to secure voluntary compliance among licensees. Other law enforcement agencies are required to notify ABC of any arrest made involving a licensee or a licensed premises.

**Administrative penalties.** Any person licensed by ABC, and his employees, must abide by all the laws of the State. If ABC has evidence of a violation involving a licensee or a licensed premises, it will file an administrative complaint, called an accusation. An accusation, if proven, will lead to the suspension or revocation of the license. An accusation is in addition to, and not a substitute for, possible criminal and civil penalties that local city and district attorneys may bring against the licensee or employee who committed the violation.

**Criminal penalties** can result from violations that are criminal offenses. For example, the sale or service of alcoholic beverages to a minor or an obviously intoxicated person is not only grounds for an accusation, but constitutes a criminal offense. Thus, the seller/server could be arrested, charged with a crime, and face a fine, community service work or imprisonment in county jail.

**Civil penalties** are money judgments and penalties resulting from a lawsuit or a permanent injunction. A local district or city attorney may bring an injunction against a licensee in cases such as a public nuisance. Also, ABC may seek an injunction against a licensee for ongoing violations by sending its request to the Attorney General, who files in the local Superior Court. ABC will seek injunctive relief in aggravated cases when there have been prior, recent, similar violations and/or there is a pending accusation involving similar violations.

**1—VIOLATION REPORTED TO ABC.** The disciplinary process begins when ABC is informed of an alleged violation involving a licensee or a licensed premises. The information can come from a citizen complaint, police report, local legislative body, or ABC's own investigators who are sworn peace officers. A **police report** is usually sufficient in itself to warrant an accusation. With citizen complaints, an independent investigation by ABC is usually required. **Citizens** can assist the law enforcement effort by documenting violations. Neighbors are encouraged to keep logs of disruptive or illegal activities they see or hear at or around the premises. This can include incidents that disrupt the neighborhood, including noise, intoxicated patrons, fights, and the like.

**2—INVESTIGATION CONDUCTED.** Investigations to detect violations may be conducted by ABC investigators and/or other law enforcement agencies. Investigations may include any of the following strategies: (a) **undercover** operations to target specific incidents of unlawful activity (e.g., drunks, narcotics, drink solicitation activity, condition violations, minors, etc.); (b) **surveillances** to check for loitering, drinking in public, graffiti, litter, excessive signage, excessive noise, etc.; (c) **premises inspections** (the law authorizes peace officers to inspect licensed premises for violations of the ABC Act during the times when the license privileges are being exercised); and/or (d) **contacting nearby residents** and business owners (an accusation to revoke a license of a disorderly premises may be based solely on the testimony and/or other evidence from citizens who live or work near the licensed premises). After completing the investigation, the investigator submits a completed assignment sheet and/or case report.

**3—CASE EVALUATED.** After the investigation, the District Office evaluates the case and takes one of six different actions, depending on the evidence and facts of the case.

**3a—No Further Action.** This means there was insufficient evidence of a violation and ABC is dropping the case with no further action.

**3b—Warning Letter or Admonishment.** A warning letter may be sent to a licensee or a licensee may be called into the District Office for an interview when the circumstances surrounding a violation show that a warning letter or interview will achieve the desired effect of compliance and the filing of an accusation is not in the best interests of justice. With warnings, there must be sufficient evidence to indicate that a violation did occur. Anything less is an admonishment.

**3c—Notice of Public Nuisance.** This notice describes nuisance conditions observed at the premises and reminds the licensee of his duty to control his premises. ABC then monitors the licensed premises. If, after being notified by ABC, the licensee fails to correct public nuisance conditions at the licensed premises within a reasonable period of time, ABC may file an accusation.

**3d—Incident File.** A police report, including any call for service to the premises by law enforcement, which does not by itself warrant an accusation, is placed in the licensee's file and accumulated. If a sufficient number of these reports or calls for service accumulate, ABC may file an accusation alleging "permitting a disorderly house" and/or "creating a law enforcement problem" at a future date.

**3e—Accusation.** If sufficient evidence exists that a violation occurred, the District Office prepares an accusation. The accusation alleges specific violations of law, rule or regulation.

**4—PRE-ACCUSATION INTERVIEW.** The District Office conducts an interview with the licensee concerning the case prior to sending the accusation package to the Division Office. The licensee is informed of the disciplinary procedure, his legal rights, the possibility of settling the case by a **Stipulation and Waiver**, the fine and appeal process, and the recommended penalty. The term Stipulation and Waiver means that the licensee agrees (stipulates) to the charges and gives up (waives) rights to an administrative hearing and appeal. Penalty recommendations are made on a case by case basis. Consideration is given to the type of violation, the minimum penalty schedule, and all factors of aggravation or mitigation, including the licensee's disciplinary history. Penalties are not meant as punishment for the licensee, but as protection for the public. Penalties are recommended based on their deterrent effect and to assure future compliance.

**5—TRANSMITTAL OF ACCUSATION PACKAGE.** The District Office forwards the accusation, the case report, supporting documents and a penalty recommendation to the Division Office. The Division Office reviews the accusation, makes a recommendation, and forwards the entire package to ABC Headquarters, Hearing and Legal, for filing (registration) of the accusation.

**6—SCHEDULING OF ADMINISTRATIVE HEARING.** Headquarters, upon receiving the accusation, case report and recommendation, will formally file the accusation, set the matter for hearing and serve the accusation, notice of defense and notice of hearing upon the respondent-licensee. Contested cases are scheduled for a hearing before an administrative law judge (ALJ) within 60 days. The purpose of the hearing is to determine whether a violation has been proved, and if so, to set a penalty.

**7—ADMINISTRATIVE HEARING.** At the hearing, ABC counsel represents ABC. The licensee may be represented by an attorney or other person, or he can represent himself at the hearing. ABC presents evidence, including testimony of witnesses, etc. The licensee may testify and/or present other evidence. Rules of evidence are primarily those followed in civil hearings, and the burden is on ABC to prove, by a preponderance of evidence, the charges set forth in the accusation.

**8—ALJ PROPOSED DECISION.** The ALJ has 30 days to prepare a Proposed Decision for consideration by the ABC Director. In the proposed decision, each charge in the accusation is shown as proved or unproved and a penalty is proposed. The ALJ may propose the same penalty that ABC suggested or a greater or lesser penalty.

**9—ACTION BY ABC DIRECTOR.** The ABC Director adopts or rejects the ALJ's Proposed Decision. If the ABC Director rejects the Proposed Decision, ABC sends a Notice of Rejection to licensee. The licensee has 30 days from the date of the notice to submit written argument.

**10—APPEAL TO ABC APPEALS BOARD.** A licensee who is not satisfied with the ABC Director's decision may appeal the Director's Decision to the ABC Appeals Board within 40 days. The Board is a separate State agency comprised of a three-member panel appointed by the Governor.

**11—ABC APPEALS BOARD DECISION.** The Board reviews the record of the administrative hearing and accepts written or oral arguments. It may not accept any new evidence that was not offered at the original hearing. The Board usually makes a decision within 120 days.

**12—APPEAL TO DISTRICT COURT OF APPEAL.** The licensee and ABC may appeal to the California District Court of Appeal (DCA) within 30 days of the Appeals Board Decision.

**13—DISTRICT COURT OF APPEAL'S DECISION.** The DCA reviews the record and renders a decision. The Attorney General represents ABC at the hearing. There is no mandated time period for the DCA to render its decision.

**14—APPEAL TO CALIFORNIA SUPREME COURT.** The licensee and ABC may appeal to the California Supreme Court within 30 days of the DCA decision. The Attorney General represents ABC before the Supreme Court. There is no time mandated for the Supreme Court to render its decision.

**15—CALIFORNIA SUPREME COURT DECISION.** The California Supreme Court makes a decision to suspend or revoke the license.