

STATE OF MAINE
CUMBERLAND, ss

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-

WESTBROOK COMMUNITY
HOSPITAL, a Maine nonprofit corporation
with a place of business at Westbrook,
County of Cumberland and State of Maine,

And

MERCY HOSPITAL, a Maine nonprofit
corporation with a place of business at
Portland, County of Cumberland and State
of Maine,

Petitioners,

v.

ATTORNEY GENERAL OF THE
STATE OF MAINE,

Party-in-Interest

VERIFIED PETITION TO TRANSFER
FUNDS AND PROPERTY
PURSUANT TO 13 M.R.S.A. § 3062

INTRODUCTION

As more fully described below, Westbrook Community Hospital and Mercy Hospital have entered into an Agreement and Plan of Merger pursuant to which Westbrook Community Hospital will merge into Mercy Hospital, which will be the surviving corporation. This is a petition brought pursuant to 13 M.R.S.A. § 3062 for approval of the transfer to Mercy Hospital, pursuant to the merger, of certain funds and property held by Westbrook Community Hospital.

PARTIES

1. Petitioner Westbrook Community Hospital ("Westbrook") is a Maine nonprofit corporation, with a principal place of business in Westbrook, Maine.

Westbrook operates a 30 bed acute care hospital in Westbrook, Maine. Westbrook is recognized as a public charity that is exempt from federal taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code.

2. Petitioner Mercy Hospital ("Mercy") is a Maine nonprofit corporation, with a principal place of business at Portland, County of Cumberland and State of Maine. Mercy operates a 200 bed acute care hospital in Portland, Maine. Mercy is recognized as a public charity that is exempt from federal taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code.

3. The Attorney General of the State of Maine is named as a party-in-interest since, under the provisions of 5 M.R.S.A. § 194, "[t]he Attorney General shall enforce due application of funds given or appropriated to public charities within the State and prevent breaches of trust in the administration thereof."

APPROVAL OF TRANSFER

4. On July 28, 1999, Westbrook and Mercy entered into an Agreement and Plan of Merger ("Plan of Merger") pursuant to which Westbrook will merge into Mercy, which will be the surviving corporation under the provisions of 13-B M.R.S.A. § 904. A true and complete copy of the Agreement and Plan of Merger is attached hereto and incorporated herein as Exhibit A.

5. Section 3062 of Title 13 of the Maine Revised Statutes provides:

Any corporation, trustees, unincorporated body or association, including a society, lodge, club or banks by whom funds or property are now held or to whom they have been or shall hereafter be entrusted by will, or by whom they have been or shall hereafter be acquired by purchase, gift or otherwise, for any religious, moral, educational, fraternal or benevolent purpose, or deposit for care of cemetery yards or lots, may transfer, convey and deliver to any other corporate body or trustees existing for the same or similar purposes, such funds or property as is now or shall hereafter come into their or its possession or shall have been given to it or them to be administered in the manner and for the purposes provided by

the donor, or as originally intended at the time of such purchase or acquisition.

No transfer of such funds or conveyance of any other kind of property shall be made without the approval of a Justice of a [sic] Superior Court or the judge of probate for the county in which the donor resides or resided at the time of his decease, if the property was acquired by gift or under any trust agreement or testamentary provision.

6. Since its founding in 1962, Westbrook has acquired certain property by gift, by testamentary disposition and/or under trust agreements.

7. Section 10 of the Plan of Merger sets forth the treatment of all property acquired by Westbrook by gift, by testamentary disposition or under trust agreements.

Section 10 of the Plan of Merger provides:

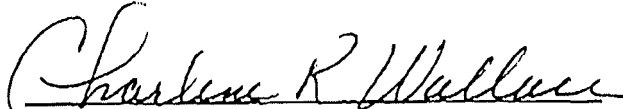
All trust funds, endowments, grants and memorial funds held, managed, or supervised by or for the benefit of the Merging Corporation [Westbrook], whether dedicated for specified uses or purposes or given for the general purposes of the Merging Corporation, shall pass on the merger date to the management, supervision, and possession of the Surviving Corporation [Mercy], which shall be bound to honor and comply with all conditions and dedicated purposes or uses of such funds, endowments and grants, as well as with all conditions and dedicated purposes or uses of any such funds, endowments and grants held, managed or supervised by or for the benefit of the Surviving Corporation.

8. The Plan of Merger ensures that after the merger date property acquired by Westbrook by gift, by testamentary disposition or under trust agreements will be administered in the manner and for the purposes provided by the donor, or as originally intended at the time of such purchase or acquisition.

WHEREFORE, Petitioners Westbrook Community Hospital and Mercy Hospital respectfully request that this Court, pursuant to 13 M.R.S.A. § 3062, approve the transfer to Mercy Hospital of such funds and property of Westbrook Community Hospital as are subject to the provisions of 13 M.R.S.A. § 3062.

VERIFICATION

Dated: August 3, 1999

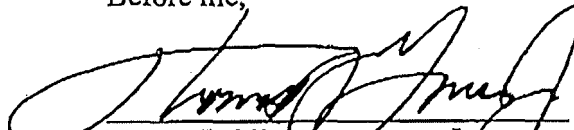

Charlene R. Wallace

STATE OF MAINE
CUMBERLAND, ss

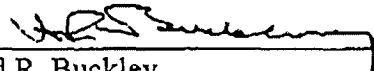
August 3, 1999

Personally appeared before me the above named Charlene Wallace, Acting Chief Executive Officer of Westbrook Community Hospital, and made oath that she has read the foregoing Verified Petition to Transfer Funds and Property Pursuant to 13 M.R.S.A. § 3062 and verifies that the facts contained in paragraphs 1, 4, 6, 7 and 8 are true.

Before me,


Notary Public/Attorney-at-Law

Dated: August 3, 1999

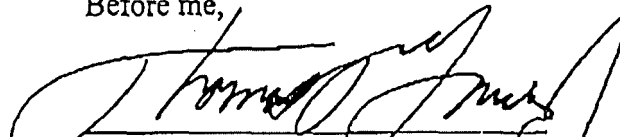

Howard R. Buckley

STATE OF MAINE
CUMBERLAND, ss

August 3, 1999

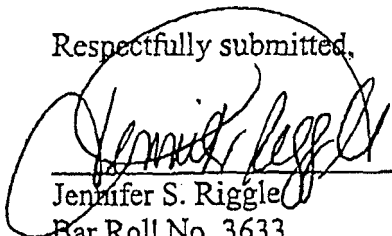
Personally appeared before me the above named Howard R. Buckley, President and Chief Executive Officer of Mercy Hospital, and made oath that he has read the foregoing Verified Petition to Transfer Funds and Property Pursuant to 13 M.R.S.A. § 3062 and verifies that the facts contained in paragraphs 2, 4, 7 and 8 are true.

Before me,


Notary Public/Attorney-at-Law

Dated at Portland, Maine this 4th day of August, 1999.

Respectfully submitted,



Jennifer S. Riggle
Bar Roll No. 3633
Germani & Riggle, LLC
Four Milk Street
Portland, ME 04101
(207) 773-7455

Attorney for Petitioner
Westbrook Community Hospital



Daniel M. Snow
Bar Roll No. 2133
Pierce Atwood
One Monument Square
Portland, ME 04101
207-791-1100

Attorney for Petitioner
Mercy Hospital

AGREEMENT AND PLAN OF MERGER**between****WESTBROOK COMMUNITY HOSPITAL****and****MERCY HOSPITAL**

AGREEMENT AND PLAN OF MERGER dated as of July 28, 1999 ("Plan") by and between Westbrook Community Hospital ("Westbrook" or "Merging Corporation"), a Maine nonprofit corporation, and Mercy Hospital ("Mercy" or "Surviving Corporation", together with Westbrook, being sometimes referred to herein as a "Corporation"), a Maine nonprofit corporation, by which Westbrook will be merged into Mercy, in accordance with the provisions of the Maine Nonprofit Corporation Act (the "Act"), Me. Rev. Stat. Ann. tit. 13-B, § 901 *et seq.*, pursuant to the following:

PLAN OF MERGER

The Merging Corporation and the Surviving Corporation are both nonprofit corporations incorporated and existing under the laws of the State of Maine.

The governing bodies of each of the Corporations deem it beneficial and advantageous to the respective corporate purposes and goals to merge into a single nonprofit corporate entity in accordance with Chapter 9 of the Act, and have approved this Agreement and Plan of Merger by duly adopted resolutions, and have duly authorized its execution by their respective Corporations.

NOW, THEREFORE, the Corporations agree that, in accordance with Chapter 9 of the Act, Westbrook shall merge into Mercy on the following terms and conditions:

1. The merger shall be effective on the later of: (1) 12:01 a.m. on September 1, 1999, or (2) upon filing of Articles of Merger with the Secretary of State for the State of Maine ("merger date").
2. The separate corporate existence and organization of the Merging Corporation shall cease on the merger date, at which time it shall be merged into the Surviving Corporation.
3. Upon compliance with Sections 901 and 903 of the Act, Articles of Merger under Section 904 of the Act shall be filed with the Secretary of State for the State of Maine.

4. The Surviving Corporation shall adopt the name "Mercy Westbrook" as an assumed name for use at the facility located in Westbrook, Maine presently owned and operated by the Merging Corporation.

5. The registered agent and registered office of the Surviving Corporation shall be Daniel M. Snow, Pierce Atwood, One Monument Square, Portland, ME 04101.

6. Prior to the merger date, each Corporation will cooperate fully with the other and shall provide the other Corporation and its accountants, counsel, and other representatives, during normal business hours, full access to the books, records, equipment, real estate, contracts, and other assets of each Corporation, and full opportunity to discuss each Corporation's affairs and assets with its officers, employees, and independent accountants, and furnish to the other Corporation and its representatives copies of such documents, records, and information with respect to the affairs of each Corporation as such representatives may reasonably request. Each Corporation shall use its best efforts to complete all actions required to effectuate the merger, including the filing of the Plan of Merger and the Articles of Merger, by September 1, 1999.

7. The Surviving Corporation shall continue to operate pursuant to the Restated Articles of Incorporation and the Bylaws of Mercy Hospital, as amended as of the merger date.

8. The Board of Trustees and the officers of Mercy shall be the Board of Trustees and the officers, respectively, of the Surviving Corporation, except that two current Trustees of the Merging Corporation shall be appointed to the Board of Trustees of the Surviving Corporation, one to serve a three-year term and one to serve a two-year term. Prior to the merger, the Board of Trustees of the Merging Corporation shall recommend to the Board of Trustees of the Surviving Corporation the names of four of its current Trustees to fill these two Board positions, the terms of which shall commence as of the merger date. The method of appointment and the terms and conditions of service on the Board of Trustees of the Surviving Corporation shall be in accordance with Bylaws of the Surviving Corporation. The sole member of Mercy shall be the sole member of the Surviving Corporation.

9. All corporate acts, plans, policies, approvals and authorizations of either of the Corporations prior to the merger date shall remain effective after the merger date except as thereafter duly modified by the Surviving Corporation or as may be altered or amended by any provision or provisions hereof.

10. All trust funds, endowments, grants and memorial funds held, managed, or supervised by or for the benefit of the Merging Corporation, whether dedicated for specified uses or purposes or given for the general purposes of the Merging Corporation, shall pass on the merger date to the management, supervision, and possession of the Surviving Corporation, which shall be bound to honor and comply with all conditions and dedicated purposes or uses of such funds, endowments and grants, as well as with all conditions and dedicated purposes or uses of any such funds, endowments and grants held, managed or supervised by or for the benefit of the Surviving Corporation.

11. The Surviving Corporation shall indemnify the Trustees and officers of the Merging Corporation from and against any and all claims arising out of or related to such person's service as a Trustee or officer of the Merging Corporation, including but not limited to claims relating to the merger or any actions taken by such person in furtherance of the merger; provided that no indemnification shall be provided for any person with respect to any matter as to which that person shall have been finally adjudicated not to have acted in good faith in the reasonable belief that that person's action was in the best interests of the Merging Corporation, or with respect to any criminal action or proceeding, to have had reasonable cause to believe that such person's conduct was unlawful. For purposes of this Section, "good faith" means honesty in fact in the conduct or transaction concerned. The termination of any action, suit or proceeding by judgment, order or conviction adverse to that person, or by settlement or plea of *nolo contendere* or its equivalent, shall not of itself create a presumption that that person did not act in good faith in the reasonable belief that that person's action was in the best interests of the Merging Corporation or, with respect to any criminal action or proceeding, had reasonable cause to believe that that person's conduct was unlawful. Notwithstanding the foregoing provisions of this Section, the Surviving Corporation shall not, by granting any indemnity or otherwise, engage in any conduct which permits the inurement to any private individual (within the meaning of Section 501(c)(3) of the Internal Revenue Code) of any part of the net earnings of the Surviving Corporation.

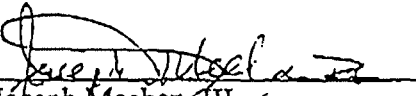
12. On the merger date the Surviving Corporation shall, without further act or deed, succeed to and possess all the rights, privileges, immunities and franchises, of a public nature as well as a private nature, of each of the Corporations; and all of the property and property rights, real, personal and mixed, causes of action and every other asset of each of the Corporations, including but not limited to bequests which may become effective after this merger, shall vest in the Surviving Corporation, and it shall be liable for all of the liabilities and obligations of each of the Corporations.

13. On the merger date the Surviving Corporation shall assume and honor all debts and obligations of the Merging Corporation of any nature whatsoever.

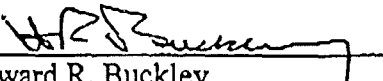
14. This Agreement and Plan of Merger may be terminated and abandoned by resolution of the Trustees of the Merging Corporation or of the sole member of the Surviving Corporation prior to the merger date. In the event of termination and abandonment, this Agreement and Plan of Merger shall become void and of no further effect and there shall be no liability on the part of either of the Corporations or the Trustees of either of them (or the sole member of Mercy Hospital) as a result thereof.

IN WITNESS WHEREOF, each of the undersigned corporations, pursuant to its duly given corporate authority has caused this instrument to be executed on its behalf by its duly authorized representative.

WESTBROOK COMMUNITY HOSPITAL

By: 
Joseph Meehan, III
Its President

MERCY HOSPITAL

By: 
Howard R. Buckley
Its President

COMPLAINT SUMMARY SHEET

This summary sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by the Maine Rules of Court or by law. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet and attaching the appropriate party to the appropriate court or courts. (SEE INSTRUCTIONS ON REVERSE)

(Note to Clerk: If this is not your court, do not enter this case)			
I. County of Filing <u>or</u> District Court Jurisdiction: <u>Cumberland</u>			
II. CAUSE OF ACTION (Cite the primary civil statutes under which you are filing, if any.) Pro se plaintiffs: If unsure, leave blank. <u>13 M.R.S.A. §3062</u>			
III. MOST DEFINITIVE NATURE OF ACTION. (Place an X in one box only) Pro se plaintiffs: If unsure, leave blank.			
<u>GENERAL CIVIL (CV)</u>			
<input type="checkbox"/> Personal Injury Tort <input type="checkbox"/> Property Negligence <input type="checkbox"/> Auto Negligence <input type="checkbox"/> Medical Malpractice <input type="checkbox"/> Product Liability <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Prelitigation Screening <input type="checkbox"/> Domestic Torts <input type="checkbox"/> Other Negligence <input type="checkbox"/> Other Personal Injury Tort Non-Personal Injury Tort <input type="checkbox"/> Libel/Defamation <input type="checkbox"/> Auto Negligence <input type="checkbox"/> Other Negligence	<input type="checkbox"/> Other Non-Personal Injury Tort Contract <input type="checkbox"/> Contract Declaratory/Equitable Relief <input type="checkbox"/> General Injunctive Relief <input type="checkbox"/> Declaratory Judgment Constitutional/Civil Rights <input type="checkbox"/> Constitutional/Civil Rights Statutory Actions <input type="checkbox"/> Unfair Trade Practices <input type="checkbox"/> Freedom of Access <input checked="" type="checkbox"/> Other Statutory Actions Miscellaneous Civil <input type="checkbox"/> Drug Forfeitures	<input type="checkbox"/> Other Forfeitures/Property Liabilities <input type="checkbox"/> Land Use Enforcement (80K) <input type="checkbox"/> HIV Testing <input type="checkbox"/> Arbitration Awards <input type="checkbox"/> Appointment of Receiver <input type="checkbox"/> Shareholders' Derivative Actions <input type="checkbox"/> Foreign Deposition <input type="checkbox"/> Pre-action Discovery <input type="checkbox"/> Common Law Habeas Corpus <input type="checkbox"/> Prisoner Transfers <input type="checkbox"/> Foreign Judgments <input type="checkbox"/> Minor Settlements <input type="checkbox"/> Other Civil	
<u>FAMILY MATTERS (FM)</u>			
Domestic Relations <input type="checkbox"/> Divorce <input type="checkbox"/> Judicial Separation <input type="checkbox"/> Register Foreign Judgment <input type="checkbox"/> Support <input type="checkbox"/> Parental Rights/Responsibilities <input type="checkbox"/> Grandparents Rights <input type="checkbox"/> Other Marriage Dissolution <input type="checkbox"/> Other Domestic Relations	Paternity <input type="checkbox"/> Paternity <input type="checkbox"/> DHS Administrative Paternity URESA/UIFSA <input type="checkbox"/> URESA/UIFSA Petition <input type="checkbox"/> Register Foreign Judgment Miscellaneous Family Matters <input type="checkbox"/> Other Family Matters	Mental Health Actions <input type="checkbox"/> Emergency Commitment <input type="checkbox"/> Involuntary Hospitalization <input type="checkbox"/> Judicial Certification <input type="checkbox"/> Petition for Modified Release <input type="checkbox"/> Petition for Release <input type="checkbox"/> Sterilization	
<u>CHILD PROTECTIVE CUSTODY (PC)</u>			
<input type="checkbox"/> DHS Protective Custody		<input type="checkbox"/> Non-DHS Protective Custody	
<u>SPECIAL ACTIONS (SA)</u>			
Money Judgments <input type="checkbox"/> Money Judgments Forcible Entry & Detainer <input type="checkbox"/> Forcible Entry & Detainer	Emancipation <input type="checkbox"/> Emancipation Protection Actions <input type="checkbox"/> Protection From Abuse <input type="checkbox"/> Protec. From Harassment	Misc. Special Actions <input type="checkbox"/> Marriage Waiver <input type="checkbox"/> Consent to Abortion <input type="checkbox"/> Land Use Mediation Program <input type="checkbox"/> Other Special Actions	
<u>REAL ESTATE (RE)</u>			
Title Actions <input type="checkbox"/> Quiet Title <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Easements <input type="checkbox"/> Boundaries	Foreclosure <input type="checkbox"/> Foreclosure Trespass <input type="checkbox"/> Trespass	Misc. Real Estate <input type="checkbox"/> Equitable Remedies <input type="checkbox"/> Mechanics Liens <input type="checkbox"/> Partition	<input type="checkbox"/> Adverse Possession <input type="checkbox"/> Nuisance <input type="checkbox"/> Abandoned Roads <input type="checkbox"/> Other Real Estate
<u>APPEALS (AP) (To be filed in Superior Court)</u>			
<input type="checkbox"/> Governmental Body (80B)		<input type="checkbox"/> Administrative Agency (80C)	<input type="checkbox"/> Other Appeals

Date Filed

IV. TITLE TO REAL ESTATE IS INVOLVED

V. NATURE OF FILING

Original Proceeding

Reinstated or Reopened and original Docket Number _____

(If filing a second or subsequent Money Judgment Disclosure, give docket number of first disclosure)

VI (a) PLAINTIFFS (Name & Address including county)

Westbrook Community Hospital
40 Park Road
Westbrook, ME 04092
Cumberland County

Check here if all counts apply to all plaintiffs.
OR Match the Counts to the plaintiffs.

Mercy Hospital
144 State Street
Portland, ME 04101
Cumberland County

(b) Attorneys (Name, Bar number, Firm name, Address, Telephone Number)
(If Pro se plaintiff, leave blank)

Jennifer S. Riggle, Esq. (3633)
Germani & Riggle
Four Milk Street
Portland, ME 04101
207-773-7455

If all counsel listed do NOT represent all plaintiffs
specify who the listed attorney(s) represent.

Daniel M. Snow, Esq. (2133)
Pierce Atwood
One Monument Square
Portland, ME 04101
207-791-1330

VII (a) ~~DEFENDANTS~~ PARTY-IN-INTEREST (Name & Address including county)

Attorney General of the State of Maine
Water Street
Key Bank Building, 4th Floor
Augusta, ME 04333
Kennebec County

Check here if all counts apply to all defendants.
OR Match the Counts to the defendant(s).

(b) Attorneys (Name, Bar number, Firm name, Address, Telephone Number)
(If known)

Linda J. Conti, Esq.
Assistant Attorney General
Public Protection
6 State House Station
Augusta, ME 04333-0006 207-626-8800

If all counsel listed do NOT represent all defendants,
specify who the listed attorney(s) represent.

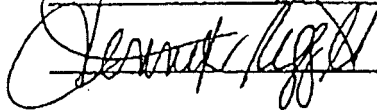
VIII. RELATED CASE(S) IF ANY _____

Judge/Justice _____

Docket Number _____


Date: August 4, 1999

Jennifer S. Riggle, Esq.



Daniel M. Snow, Esq.

Name of Lead Attorney of Record or Pro se Party


Signature of Attorney or Pro se Party

cc:

STATE OF MAINE
CUMBERLAND, ss

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-

WESTBROOK COMMUNITY HOSPITAL ET AL.)
)
 Petitioners)
)
 v.)
)
 ATTORNEY GENERAL OF THE STATE OF MAINE)
)
 Respondent)

ATTORNEY GENERAL'S
RESPONSE TO VERIFIED
PETITION TO TRANSFER
FUNDS AND PROPERTY
PURSUANT TO
13 M.R.S.A. § 3062

NOW COMES Andrew Ketterer in his capacity as Attorney General of the State of Maine and in response to the Verified Petition to Transfer Funds and Property Pursuant to 13 M.R.S.A. § 3062 filed by Petitioners, Westbrook Community Hospital and Mercy Hospital in the above-referenced matter as follows:

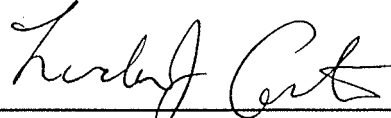
1. The Attorney General is a party in interest in this matter pursuant to 5 M.R.S.A. § 194 which provides "[t]he Attorney General shall enforce due application of funds given or appropriated to public charities within this State and prevent breaches of trust in the administration thereof";
2. The Attorney General has received a copy of the Petition and all attachments thereto and has reviewed the same.
3. The Attorney General submits to the Jurisdiction on this Court and waives service of process in this matter; and

4. The Attorney General has no objection to the granting of the relief requested in the Petition.

Date: August 6, 1999

Respectfully submitted,

ANDREW KETTERER
Attorney General



LINDA J. CONTI
Assistant Attorney General
Me. Bar No. 3638
6 State House Station
Augusta, Maine 04333-0006
(207) 626-8800

STATE OF MAINE
CUMBERLAND, ss

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV- 99-442 ✓

WESTBROOK COMMUNITY
HOSPITAL,

And

MERCY HOSPITAL,

Petitioners,

v.

ATTORNEY GENERAL OF THE
STATE OF MAINE,

Party-in-Interest

ORDER AND JUDGMENT

This matter came before the Court on Verified Petition to Transfer Funds and Property Pursuant to 13 M.R.S.A. § 3062. The Attorney General of the State of Maine has entered his appearance and has informed the Court that he has no objection to the grant of the Petition.

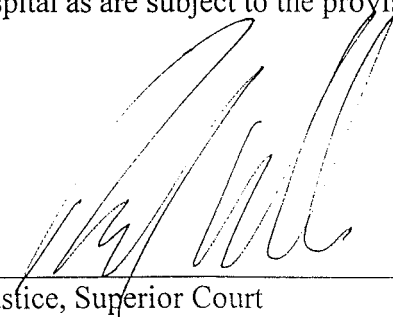
It is hereby ORDERED AND ADJUDGED:

The Verified Petition to Transfer Funds and Property Pursuant to 13 M.R.S.A. § 3062 is granted.

Pursuant to 13 M.R.S.A. § 3062 and in accordance with the terms and conditions of the Agreement and Plan of Merger between Westbrook Community Hospital and Mercy Hospital dated July 28, 1999 to be filed with the Maine Secretary of State, the Court approves the transfer to Mercy Hospital of such funds and property of Westbrook Community Hospital as are subject to the provisions of 13 M.R.S.A. § 3062.

DATE:

August 10, 1999


Justice, Superior Court