

“contested and substantial federal question,” *Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.* 545 U.S. 308 (2005).

The text of the Health Care Quality Improvement Act (“HCQIA”) does not expressly create a private cause of action. 42 U.S.C. §11101-11152. Other courts that have considered the issue have declined to find a private right of action in the HCQIA. *Carr v. United Reg'l Health Care Sys., Inc.*, 2006 WL 2370670 (N.D. Tex. 2006). In addition, there does not appear to be a substantial issue of federal law that is intertwined with the state law causes of action. In this case, plaintiff alleges defamation, business disparagement, and intentional infliction of emotional distress. While the substantive standards for physician conduct set by the HCQIA may be relevant to these state law claims, the complaint does not allege a substantial question regarding the HCQIA itself. The HCQIA provides immunity for physicians who participate in “professional review actions,” 42 U.S.C. § 11111. Plaintiffs assert that the defendants are not eligible for HCQIA immunity. Compl. ¶ 43. However, it is well-settled that anticipating a federally-created defense to a state law claim does not confer federal question jurisdiction. *Louisville & Nashville Railroad Company v. Mottley*, 211 U.S. 149 (1908). The complaint does not sufficiently establish that the claims in this case “arise under” federal law. Accordingly, Plaintiffs are ordered to show cause in writing on or before **August 29, 2013**, why this case should not be dismissed for lack of subject matter jurisdiction.

SIGNED this 14th day of August, 2013.



XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE