After Dr. J. Augusto Bastidas removed a patient’s kidney instead of a cancerous pancreas, ultimately resulting in the patient’s death, the hospital and its medical staff suspended his surgical privileges, leading him to sue over alleged civil rights violations including racial discrimination and retaliation claims.

According to lead defense counsel Michael Li-Ming Wong of Gibson, Dunn & Crutcher LLP in San Francisco, the case was unusual in that most civil rights or retaliation cases are not tried to verdict. He said the jury’s unanimous verdict and decision to award no money to the plaintiff were partly due to his ability to persuade the jury about the central theme of the case.

Hewing to his central theme, Wong in-troduced evidence of other patient safety issues involving the doctor and supporting his argument that the case was not about retaliation.

“You learn from doing trials that usually a very effective cross-examination is not scoring the big Perry Mason moment that we all dream about during law school, but instead, death by a thousand cuts,” Wong said.

He added that Bastidas was combative and argumentative during questioning, but he was determined not to argue.

Wong said the decision was a victory for the ability of medical staffs to properly censor doctors. “In this litigious environment, it does help establish that patient safety should be the bedrock principle, the cornerstone for peer review proceedings,” he said.

— Chase DiFeliciantonio