Section 1 - Introduction

Key resources

As part of your educational program leading to your registration as a nurse or midwife, or as part of your ongoing professional development, you would be aware there are professional, ethical and legal responsibilities expected of you in the delivery of your nursing care and services.

**Codes from the Nursing and Midwifery Board of Australia**

Those ethical and professional conduct responsibilities in particular are contained in the relevant Codes issued by the Nursing and Midwifery Board of Australia.

You would know of them as the *Code of Professional Conduct for Nurses in Australia* and the *Code of Ethics for Nurses in Australia*.

There are similarly titled Codes for midwives.

They are, in effect, complementary documents and you should familiarise yourself with them.

The *Code of Ethics* outlines, in general terms, the commitment of the nursing and midwifery professions to respect, promote, protect and uphold the fundamental rights of people who are both recipients and providers of nursing and health care.

The *Code of Professional Conduct* sets out the minimum standards for practice a registered nurse or midwife is expected to uphold, both within their professional role as well as outside it, in order to ensure the good standing of the nursing profession.

**National Competency Standards**

In addition to the Codes, the Nursing and Midwifery Board of Australia oversees the national competency standards for registered nurses and midwives.

Those competency standards, as expressed, are broadly stated and principle-based and are the core competency standards by which your performance as a nurse or midwife is assessed in order to obtain and retain your registration as a registered nurse or midwife in Australia.

**Why familiarity with these documents is important**

So it is important that you be familiar with the above documents. Apart from attesting to the professional standing and educational underpinnings of nurses and midwives, they incorporate, by reference, the legal principles by which your day-to-day practice as a nurse or midwife will be judged.
For example, the Code of Professional Conduct for Nurses states, amongst others, that nurses ‘should practise in a safe and competent manner’ and ‘conduct themselves in accordance with laws relevant to the profession and practice of nursing’.

As well, the professional practice domain of the National Competency Standards for Registered Nurses requires that nurses, when practising, should comply ‘with relevant legislation and common law’; and that the nurse or midwife ‘fulfils the duty of care’ by performing ‘nursing interventions in accordance with recognised standards of practice’.

Determining competent professional practice

In order to apply the legal principles incorporated by reference in the Code of Conduct and the National Competency Standards to your professional practice, it is necessary to know the starting point the legal system would apply when your nursing practice is being critically scrutinised.

In short, the test would be how competently, or not, did you discharge your duty of care to maintain your professional practice standards?

This occurs invariably when an allegation of professional negligence is raised. Generally such an allegation arises when a patient or other third party has been damaged or suffered harm in some way as a result of your practice as a nurse or midwife.

The Civil Liability Act 2002

In New South Wales, that starting point is to be found in the Civil Liability Act of 2002, specifically Section 5 O.

That section, relevantly, states that a professional would NOT be considered professionally negligent in the delivery of a professional service ‘if it is established that the professional acted in a manner that (at the time the service was provided) was widely accepted in Australia by peer professional opinion as competent professional practice’.

That is the standard the law expects of all professionals when discharging their professional duty of care in the delivery of their professional services.

In determining the appropriate standard of care expected in a given clinical situation, the critical words in Section 5 O are that, at the time, and in the way, the professional service was delivered it

“was widely accepted in Australia by peer professional opinion as competent professional practice”.

How is competent professional practice determined?

How does the law determine what is ‘competent professional practice’ by reference to ‘peer professional opinion’?

Expert witnesses

Peer professional opinion is no more and no less than the opinion of your professional peers – the law often refers to them as ‘expert witnesses’.
For example, if a court was required to determine what would be considered competent professional practice in relation to the area of intensive care nursing, expert opinion would be sought from nurses who would be considered experts in that field of nursing practice.

Expert witnesses are invariably recognised as experts in their field of practice based on both academic knowledge and, in the health care area in particular, extensive clinical experience.

**Documentation**

The other major source of determining professional standards inherent in the phrase ‘competent professional practice’ are the myriad of documents that are an integral part of any professional service.

The health service is replete with them. For example, New South Wales Health policies, localised clinical guidelines and protocols, as well as accreditation manuals.

All of these documents are available to be scrutinised and, very often, will contain statements about the standards to be followed in relation to a wide range of clinical services.

When these documents are compared against the patient records, they may well disclose a less than optimal ‘competent professional practice’ on one or on a number of occasions.

For this reason, it is important for nurses and midwives to be familiar with the policies and accepted clinical protocols relevant to their area of practice and to view them as the standards by which their professional work and responsibilities are undertaken.

**Professional practice standards**

Nurses and midwives have been extremely good at documenting and maintaining their standards of practice.

The important point to remember, however, is that when documenting such standards they should reflect the way in which the service is delivered on a day-to-day basis in the clinical environment.

On some occasions, nurses and midwives have written practice standards that can best be described as aspirational – that is, standards that take little or no account of the day-to-day clinical environment in which nurses and midwives work and, as a result, are simply unattainable.

To be meaningful, professional practice standards should quite properly reflect the way in which the work is done, and able to be done, on a day-to-day basis.

In short, professional practice standards should become the foundation for all professionals, including nurses and midwives, to develop good professional habits in the way they approach their work.
Conclusion

While it is acknowledged that attention to relevant documentation can be a time consuming task, it is important as a nurse and midwife that you are familiar with the policies and clinical standards relevant to your professional practice.

As well, you should be conversant with the written records of your patients and not simply rely on verbal reporting.

In many respects, the written records of a patient’s care, when assessed against relevant practice standards and the expert evidence of your professional peers, will be the reference point the courts will use when determining whether the standard of care given to a patient was, or was not, competent professional practice.

The purpose of the sections that follow, dealing with specific aspects of professional care and practice undertaken by nurses and midwives, are intended to reinforce principles and acknowledged safe professional practices that will assist nurses and midwives to discharge their professional and legal obligations to maintain competent professional practice in their day-to-day work.

I encourage you to carefully consider the case studies in the remaining four sections.